

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, * CR-03-B-338-S
V. * December 21, 2005
JASON BROWN, * Birmingham, Alabama
Defendant. * 10:05 a.m.

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REPORTER'S OFFICIAL TRANSCRIPT OF
SENTENCING HEARING

BEFORE THE HONORABLE SHARON LOVELACE BLACKBURN
UNITED STATES DISTRICT JUDGE

COURT REPORTER: Julie A. Martin, RMR, CRR
Federal Official Court Reporter
1729 Fifth Avenue North, Ste 325
Birmingham, Alabama 35203

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A P P E A R A N C E S

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FOR THE UNITED STATES:

James Ingram
U.S. Attorney's Office
1801 4th Avenue North
Birmingham, Alabama 35203

FOR THE DEFENDANT:

Joseph C. Espy, III
C. Mark Bain
MELTON ESPY & WILLIAMS
301 Adams Avenue
PO Drawer 5130
Montgomery, AL 36103-5130

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P R O C E E D I N G S

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THE COURT: We're here this morning in the case of United States of America versus Jason Brown, CR-03-B-338-S. Mr. Espy, I see that you and your client have had thirty-five days in which to review the presentence report; correct?

MR. ESPY: Yes, ma'am.

THE COURT: Other than the filed objections, do you have any other objections to the contents of the presentence report?

MR. ESPY: No, ma'am.

THE COURT: If I'm looking at this correctly, all your objections have been resolved except for the loss amount; is that correct?

MR. ESPY: That's correct, Your Honor.

THE COURT: It's my understanding that the government wishes to present some evidence in that regard; is that right?

MR. INGRAM: That's correct, Your Honor.

THE COURT: All right. If you would call your first witness, and then I will hear argument and let you present evidence also. The burden is on the government.

MR. ESPY: Yes, ma'am.

MR. INGRAM: The government calls Neal Seiden.

NEAL SEIDEN, GOVERNMENT'S WITNESS, SWORN.

1 THE CLERK: State your name, please.

2 THE WITNESS: Neal Seiden.

3 THE CLERK: Spell your last name for the record.

4 THE WITNESS: S-e-i-d-e-n.

5 THE CLERK: In what city and state do you reside?

6 THE WITNESS: Marietta, Georgia.

7 THE COURT: Before you begin, I somehow came in here
8 without Mr. Seiden's affidavit. Just one second.

9 (Brief pause)

10 THE COURT: All right. You may proceed.

11 **DIRECT EXAMINATION**

12 **BY MR. INGRAM:**

13 Q. Mr. Seiden, what is your current employment?

14 A. I'm employed by the Securities and Exchange Commission,
15 and I'm also a part-time instructor at a university in Georgia.

16 Q. The Securities and Exchange Commission is also known as
17 the SEC?

18 A. Yes, it is.

19 Q. How long have you been employed by the SEC?

20 A. Since July 1984.

21 Q. And tell the court what are the responsibilities of the
22 Securities and Exchange Commission.

23 A. Our two prime missions, as it be, would be to protect
24 investors and to insure and maintain fair and honest stock and
25 bond markets.

1 Q. And what is your position currently with the SEC?

2 A. I'm a senior accountant in the division of enforcement.

3 Q. What are your duties in that role?

4 A. I investigate possible violations of federal security
5 laws. I primarily focus on financial accounting fraud and
6 insider trading. And I do my job by investigating, taking
7 testimony from individuals, looking at documents, books and
8 records of companies, their internal accounting controls.

9 I look at auditors and the auditor work papers and
10 interview to see if there's been any type of violation of the
11 law. And if so, then I make a recommendation as to what, if
12 any, enforcement action is necessary.

13 Q. And how long have you done that type work?

14 A. Since June 1988.

15 Q. Have you worked in any other areas of the SEC?

16 A. Yes, I have. I worked in the division of corporation
17 finance in Washington, D.C.

18 Q. What were your responsibilities there?

19 A. The division of corporation finance is responsible for
20 reviewing information provided by companies that's filed with
21 the SEC, which is ultimately distributed to investors and the
22 general public.

23 Our job up there is to review the annual reports on
24 Form 10-K; the quarterly reports on Form 10-Q; registration
25 statements, which are when a company wants to issue stocks,

1 bonds or any other type of securities; proxy statements, and to
2 make sure that the information is fair, full and disclosed on a
3 timely basis.

4 Q. Now, were you employed elsewhere before you joined the
5 SEC?

6 A. Yes, I was.

7 Q. Where did you work?

8 A. Right before the SEC, I worked for a publicly-held bank in
9 Washington, D.C. I was an assistant controller. My job was to
10 review and oversee the general ledger functions of the company,
11 the bank's internal accounting controls and external financial
12 reporting to the SEC and bank regulatory agencies.

13 And before that, I was an auditor with a
14 multi-national accounting firm in Baltimore. I was a senior
15 accountant there doing audit work.

16 Q. Could you state your educational background, please?

17 A. I attended the University of Maryland. I obtained a BS
18 degree in accounting. And, subsequently, I obtained my CPA,
19 certified public accountant license.

20 Q. When did you obtain your CPA license?

21 A. Early 1983.

22 Q. Now, Mr. Seiden, in regard to your duties with the SEC,
23 have you been involved in the investigation of HealthSouth
24 Corporation?

25 A. Yes, I have.

1 Q. And how did you first become involved in the
2 HealthSouth investigation?

3 A. I was assigned -- I was given a newspaper article back in
4 August of 2002 by one of my supervisors, and it was an article
5 about -- negative information about HealthSouth Corporation.

6 And I basically followed procedure, which was to open
7 up a case, an investigation, and to start finding out if any
8 violations had occurred.

9 Q. Now, with regard to those individuals who have pled
10 guilty in connection to their participation in the
11 accounting fraud conspiracy at HealthSouth, have you
12 conducted investigations to determine if any loss is
13 associated with those defendants' roles?

14 A. Yes, I have.

15 Q. Now, with regard to Jason Brown, the defendant here
16 today, did you conduct such an investigation?

17 A. Yes, I did.

18 Q. Now, tell me what you did in the way of determining
19 whether or not there was a loss associated with Mr. Brown's
20 participation in a conspiracy?

21 A. What I did is I reviewed certain documents. I looked at
22 Mr. Brown's plea agreement, his Information, his 11(f). I also
23 looked at the FBI 302s for when he was interviewed, and then I
24 reviewed certain case law -- specifically, it would be the
25 Snyder case, the Backhit case and the Grabske case -- to

1 determine what the applicable case law is and what the courts
2 look for.

3 What I determined was that the courts were looking
4 for a reasonable estimation of loss based upon the best
5 available specific information that's out there at the time.

6 THE COURT: I don't know if you looked at the Hunter
7 case. Did you look at that case? Do you recall USA versus
8 Hunter? And I just want to read part of it into the record.

9 THE WITNESS: Yes, I did, Your Honor.

10 THE COURT: You did look at that case?

11 THE WITNESS: Yes.

12 THE COURT: Great.

13 THE WITNESS: I looked at the Hedges case, the Jamie
14 Olis case, the Moskowitz case and the Eyman case as well.
15 Those are the ones --

16 THE COURT: Just one second.

17 (Brief pause)

18 THE COURT: Go ahead.

19 Q. (By Mr. Ingram) You have identified the items you have
20 looked at as part of your investigation. Based on those
21 items that you reviewed, what factors were you able to glean
22 from those as they relate to whether or not this defendant
23 was responsible for any loss?

24 A. Yeah. I took a look and determined that he was part of
25 the conspiracy during a set period of time. I believe it was

1 July 19th, 2002 to March 19th, 2003.

2 THE COURT: How did you come up with those dates?

3 THE WITNESS: Okay. After reviewing all of the
4 information available to me, most of the information seemed to
5 indicate mid June of 2002 that the defendant entered into the
6 conspiracy. I also saw -- and, actually, the other document I
7 saw, I believe it was called the presentencing memo written by
8 the defense.

9 However, what I did is I looked for the first time
10 that I could definitively tell the defendant made a specific
11 act in furtherance of the conspiracy. I had obtained a work
12 paper from the Ernst and Young work papers that shows the
13 apparent Excel spreadsheet that Mr. Brown purportedly
14 constructed, and the first date on there was July -- I believe
15 it's July 19th, 2003, so I used that as --

16 THE COURT: 2002 you mean?

17 THE WITNESS: Yes, ma'am. I'm sorry. Thank you.

18 THE COURT: How did you determine the ending date of
19 his involvement?

20 THE WITNESS: I know that he did not come forward or
21 leave the conspiracy until it was publicly disclosed. I
22 confirmed that with the Assistant U.S. Attorney's Office and
23 the Department of Justice in Washington.

24 THE COURT: All right. Go ahead.

25 Q. (By Mr. Ingram) Now, based on the specifics that you

1 found in those documents, were you able to make a
2 determination as to whether or not this defendant's
3 participation in the HealthSouth accounting fraud conspiracy
4 resulted in a loss?

5 A. Yes, I was able to do that.

6 Q. Tell us how you went about determining exactly what
7 that loss was.

8 A. Again, I determined the time period that he was in the
9 conspiracy and then figured out the amount of loss -- the total
10 amount of victims involved in the case and then tried to
11 determine the average loss per victim.

12 However, what I also had to do was come up with some
13 type of reasonable approach to this, because he was in for a
14 shorter period of time and a lot limited amount of type of
15 transactions.

16 My understanding is the scope that he was involved
17 with, that he was charged with, came down to two transactions.
18 One was the CareMark stock, and one was the same store sales.

19 But based on the information available to me, I had
20 to do what I did in previous sentencings, for example, the Bill
21 Owens sentencing, which was to find out the amount of loss by
22 figuring out the average price of the stock and the bonds
23 during the fraud and subtracting from that the average price of
24 the stock and the bonds after the fraud, taking each of those
25 numbers and multiplying it by the number of victims or harmed

1 shares for stockholders and the amount of bonds out there for
2 bondholders.

3 Again, I would also like to add, I think it's a
4 maximum amount, but I don't have any ability to guess what it
5 could be otherwise. There's just no other information out
6 there.

7 Q. If you would, walk through your --

8 THE COURT: Well, you can cross-examine him on that.

9 MR. ESPY: Okay. And I would like to note when he
10 starts guessing, that's when I want to --

11 THE COURT: He said that the loss he's projecting is
12 the maximum loss to shareholders and that it could be less, but
13 he would be guessing. Did I say that right?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: But you can cross him on that.

16 Q. (By Mr. Ingram) Mr. Seiden, if you would walk through
17 your calculation for us and how you reached your --

18 THE COURT: Could you get me on the right page, so I
19 can follow in your affidavit?

20 Q. In connection with your testimony, did you previously
21 submit an affidavit to the court concerning your
22 determination of the loss calculation?

23 A. Yes, I did. I guess I will start on Page 4, Your Honor.

24 THE COURT: All right.

25 A. What I did was I've broken it into two sections. First,

1 the stockholders appears on Page 4. And I figured out the
2 average stock price, average closing weekly stock price from
3 July 16th, 2002 through March 18th, 2003.

4 So I do want to correct that. I think I said July
5 19th before. It's actually July 16th. I came up with the
6 average weekly closing price which was \$5.06 a share. Then I
7 figured out what was the weekly average closing stock price
8 once the fraud was disclosed. And I used a time period March
9 19th, 2003 through July 3rd, 2003. That came out to .34 a
10 share.

11 I took the difference, which was \$4.72 a share,
12 multiplied it by the estimated number of innocent issued and
13 outstanding shares, and that came out to 395,824,403 shares.
14 And the result of that calculation comes out to a loss to
15 stockholders of \$1,868,291,182.

16 I used a similar type calculation for the bonds that
17 were outstanding during the time period. And that total amount
18 came out to a loss --

19 THE COURT: Where are you reading from?

20 THE WITNESS: Actually, I am reading on Page 4 also,
21 Paragraph 11, the very last sentence at Paragraph 11. The loss
22 to bondholders is 968,102,456. And the calculation in my
23 affidavit regarding the bondholders begins on Page 9.

24 THE COURT: How about going through that on the
25 record, too?

1 THE WITNESS: Sure. What I did first was to find out
2 what bonds were issued and outstanding as of the last trading
3 date before the bond trading was halted, and that would have
4 been on March 18th, 2003.

5 In Paragraph 29, I've listed out the relevant
6 information for the bonds, the amount outstanding, the date it
7 was issued, and which issue each one was.

8 And then if you skip over to Page 10, Paragraph 32, I
9 basically -- I'm reporting that what I did was took the average
10 daily price of the bonds, which was a lot easier to obtain,
11 during the period of the fraud, and then I subtracted from it
12 the reported average daily price of each bond during a period
13 after the fraud.

14 And, again, for both the stock and the bonds, the
15 subsequent trading period extends from the first date that the
16 bonds and stocks resume trading until a material event
17 affects -- significantly and materially affects the price of
18 the stock and the bonds. And in this case, it was July the
19 3rd, 2003.

20 The reason I stuck with that date is that was, I
21 believe, a Thursday. The next trading day was Monday, July the
22 7th, 2003. And on that day, HealthSouth, in an investor
23 conference in New York, had announced they would not be seeking
24 bankruptcy protection. They didn't think they would have to.

25 And the stock and bond prices reacted extremely

1 positive on that. It was the first indication, since the fraud
2 was publicly disclosed, that they would not be seeking
3 bankruptcy protection.

4 So once I got those numbers for the bonds, I
5 multiplied it by the amount of the bonds that were outstanding
6 to come up with the number.

7 Q. Mr. Seiden, I believe you mentioned the Snyder case.
8 Is that an Eleventh Circuit opinion, United States versus
9 Snyder, that you're referring to?

10 A. Yes, it is.

11 Q. Now, do you have an opinion, Mr. Seiden, based on the
12 information available to you, whether or not the loss
13 calculation that you have testified to is a reasonable
14 calculation given all that's available?

15 A. I believe it to be a reasonable method of calculating loss
16 in this case based on what's available out there.

17 Q. Now, let me ask you, the defense has raised a number of
18 arguments in their sentencing memorandum concerning the
19 loss. One, of course, questions whether or not that is a
20 reasonable way to calculate the loss.

21 Now, there are other methods to calculate the loss,
22 are there not?

23 A. There are. The law is general on it. The alternative
24 method I'm familiar with is, for example, when a stock or a
25 bond becomes -- let me just say a security becomes completely

1 worthless, which we do not have in this case, you can go into
2 having economists give you different formulas and calculations
3 based on, for example, regression analysis.

4 But based on my reading of the case law, it appears
5 that the courts really don't want to get into that type of
6 calculation and having those type of witnesses testify.
7 They're looking for something more reasonable, more
8 economically realistic and simplistic, which is what I have
9 done in this case.

10 Q. Now, the defense also argues that Mr. Brown's actions,
11 as part of this conspiracy, did not cause any loss to
12 investors. Do you have a response to that?

13 A. I disagree.

14 Q. And why do you disagree?

15 A. The fraud that he participated in was serious. He knew
16 that he was doing something wrong. He has a BS degree in
17 accounting. It's very basic accounting that you only record
18 transactions and create backup documentation for that which is
19 true and accurate.

20 He was approached by senior management -- for
21 example, in the CareMark transaction, he was approached by the
22 then CFO of the company and also the senior vice-president, who
23 is also the treasurer of the company, which raises it to a more
24 serious level. He was involving and dealing with other people,
25 other vice-presidents at the company, who were also engaged in

1 the transactions.

2 He prepared a document, in my opinion, a
3 sophisticated document, to further the fraud, which he knew
4 would be provided to the outside auditors. He was asked to
5 conceal it from the outside auditors.

6 And, again, also during the time period, that then
7 current environment, we had other major frauds going on that
8 the public was reacting negatively to. You had the MCI
9 Worldcom transaction fraud. You had the Enron situation. You
10 had the passing of the Sarbanes-Oxley Act, which some of his
11 entries into this transaction that he created on the
12 spreadsheet actually carried over post Sarbanes-Oxley.

13 Based on all that, it's my belief and opinion that if
14 the auditors had found out about that, they would have reacted
15 negatively. They would have most likely withdrew their audit
16 opinion. There would have been special forensic accountants to
17 come in to find out what was going on, why was there
18 misstatements going on, why were senior managers involved at
19 the company at the highest levels of the company. It raises a
20 lot of questions that the auditors would have reacted
21 negatively to.

22 I think the banks, you know, they have debt covenants
23 with HealthSouth that indicate that the financial statements
24 need to conform with GAAP. That would have been violated and
25 subject to being recalled or, you know, paid back early. Banks

1 probably would have frozen the lines of credit.

2 Again, also, I do want to mention the second
3 transaction was the same store sales, and that one not only had
4 the CFO involved, but the then Chief Operating Officer, who was
5 also president and a director of the company.

6 So based on all the people involved and knowing that
7 this is being concealed from the auditors, I think it's
8 reasonable to say that he could have foresaw a negative
9 reaction in the stock and bond prices.

10 Q. Now, Mr. Seiden, were any actions taken by Mr. Brown or
11 actions that Mr. Brown caused others to take that resulted
12 in false financial information that was ultimately made
13 available to the investing public?

14 THE COURT: Let me hear that question again.

15 MR. INGRAM: I'm sorry. That perhaps was a bit
16 convoluted. Let me rephrase that.

17 Q. Mr. Seiden, based on your investigation of Mr. Brown's
18 participation in the conspiracy, were you able to identify
19 whether or not any of the actions that Mr. Brown took
20 resulted in false financial information being made
21 ultimately to the investing public?

22 A. Yes. Again, he created the spreadsheet to conceal the
23 true nature of the CareMark transaction of when it was actually
24 sold.

25 THE COURT: Can you go through that in some detail

1 for me as to exactly what he did?

2 THE WITNESS: Yes.

3 THE COURT: I've read it, obviously, but I would like
4 you to explain it to me a little better.

5 THE WITNESS: There is a work paper. I don't know if
6 --

7 THE COURT: I would like to see it, yes.

8 MR. INGRAM: Your Honor, I guess we could mark this
9 as Government's Exhibit 1.

10 THE COURT: All right. It will be considered so
11 marked. Go ahead.

12 THE WITNESS: I think that would be helpful.

13 Q. (By Mr. Ingram) Mr. Seiden, I've shown you or handed
14 to you what I will have marked as Government's Exhibit
15 Number 1, and ask you if you recognize this document?

16 A. Yes, I do.

17 Q. And what is this document?

18 A. It's from a spreadsheet that, it's my understanding, was
19 created by Mr. Brown to document and show the auditors that the
20 CareMark stock was sold in 2002, when, in fact, it was really
21 sold in 2001. It came from the Ernst and Young work papers,
22 which I previously obtained during the course of my
23 investigation.

24 Q. Based on your investigation, can you walk through the
25 steps of the CareMark transaction and how we get to this

1 document?

2 A. Yes. The CareMark stock was sold approximately June 2001,
3 and it was not removed from the books. So if you looked at the
4 2001 10-K and the other assets line item on the balance sheet,
5 comprised in that total would have been, I believe it was 27
6 million dollars which related to the CareMark investment.

7 In 2002, Mr. Brown --

8 THE COURT: When you say it wasn't removed from the
9 books, the stock itself remained on the books?

10 THE WITNESS: Yeah. It was actually taken off for
11 like a day or two and then put right back on. So, in essence,
12 as far as the public --

13 THE COURT: What was the reason for that? Was that
14 to make it look as if there were more assets still there, and
15 they put the cash there, too? What did they do in that year?

16 THE WITNESS: Generally, what they were doing was
17 they were manipulating the income statement side of the books
18 and records to create more income, and they had to have an
19 offset somewhere.

20 So to hide, in this case, the contractual allowances
21 that they were reducing, which created more income, they had to
22 have an offsetting entry, a debit, as it be. And they put that
23 into the investment account, so they could conceal that the
24 income was being falsified on the income statement.

25 So that's why they continued -- and they did this not

1 only for the CareMark, but the company itself had done it for
2 other investment transactions as well.

3 In 2002, when they wanted to try to show the auditors
4 that it had actually been sold in 2002, they had to create some
5 type of documentation to present to the auditors, so the
6 auditors would have some type of evidence that they could
7 satisfy themselves.

8 And what they did is Mr. Brown created this document
9 with the relevant information to show the auditors. And you
10 will see at the top, it says beginning shares, and it says
11 approximately like 1.692 million shares. And then what he had
12 to do was over ten different -- I'm sorry, I think this is
13 twenty-two different entries he made to show blocks of stock
14 being sold until it went down to zero.

15 And then, correspondingly, what he was doing and
16 others at the company were these wire transfer amounts on the
17 far right side. And every so often, they would basically wire
18 money to their brokerage account, have the money wired back to
19 a HealthSouth account and then transfer it to another
20 HealthSouth account.

21 And they would show the auditors the transfer just
22 between the HealthSouth accounts, making it look like they had
23 sold the stock and the amounts matched up to this schedule.

24 They were very careful not to exceed the amount of
25 shares traded for any given day, because that would have been a

1 red flag to the auditors. So, for example, if they would have
2 booked, you know, 1.6 million shares in one day, it would have
3 been a red flag, because probably that particular day
4 HealthSouth only traded 500,000 shares. So they had to take
5 their time and devise a plan that wouldn't be a red flag and do
6 it overtime.

7 And, again, what they showed is that the wired amount
8 from the bank accounts matched up what was on the schedule. So
9 to an auditor, at least at first glance, everything looks like
10 it's matching up and agreeing.

11 Q. (By Mr. Ingram) Mr. Seiden, a few times you mentioned
12 "they." Now, specifically, did Mr. Brown play a role in
13 creating that document?

14 A. Yes. My understanding is he's the one who would each and
15 everyday keep track and calculate out the numbers on the
16 spreadsheet, and then he would provide the information to
17 Kathryn Fowler and/or Kay Morgan, so that they could do their
18 role, which was to do the wire transfers and to book the
19 entries.

20 Q. And what was the end result of this action by creating
21 this false document? Well, first let me ask you, just to
22 make certain, this is a false document, is it not?

23 A. Yes, it is.

24 Q. And how was this document used?

25 A. It was used to the auditors to show that -- in order to

1 book the transaction and show they had a sale and a gain in
2 2002, this was the supporting documentation to the auditors.

3 The auditors are basically going in and doing a
4 testing of the books and records and the numbers and the
5 transactions of the company. They can't do a hundred percent
6 testing, so they get various information. This would be audit
7 evidence.

8 And then they trace and agree numbers sometimes, or
9 they just take it on face value and talk to people at the
10 company and say, now, based on your oral representations to us,
11 we believe this to be true and accurate, which is basically
12 what they did in this situation.

13 Q. Now, with regard to the same store volume matter, can
14 you tell us exactly what was involved in that aspect of
15 Mr. Brown's participation in the conspiracy?

16 A. Yeah. In the third quarter of 2002, so this would have
17 affected, I believe it was in November of 2002, right around
18 the time they were going to disclose to the public their
19 financial statement numbers and other statistics, they issued a
20 press release which, among other things, included financial
21 statements and the so-called same store sales.

22 And, generally, what this is is financial analysts
23 and investors like to see lots of statistics and lots of
24 numbers. One of them is the same store sales, which is
25 comparing which facilities of HealthSouth were opened in, say,

1 the prior year, comparing it to the same stores that remained
2 open during the current year, and try to get an analysis or --

3 THE COURT: Was it that or was it -- maybe I
4 misunderstood. I thought it was reporting patient volume in
5 those stores.

6 THE WITNESS: It was, it was. It's the patient
7 volume from the facilities.

8 THE COURT: And it was my understanding that he was
9 asked initially to -- maybe this is from the defendant's
10 sentencing memorandum -- to show it as a positive, so that the
11 numbers had increased. They say he refused to do that.

12 And somewhere I've read that it wasn't that he
13 refused, but that he couldn't show it as a positive, so he
14 showed it as not as much of a negative as it really was.

15 And I'm not sure which is right, whether he actually
16 refused to show it as a positive or it was impossible to show
17 it as a positive. Maybe you can clear that up for me. Was
18 I clear on what I was asking?

19 MR. INGRAM: Yes, Your Honor.

20 THE COURT: Okay.

21 Q. Mr. Seiden, based on your review of Mr. Brown's 302s as
22 part of the investigation, do you have any knowledge as to
23 whether or not Mr. Brown was asked to make it a positive
24 number or what action was taken at that point?

25 A. Based on the 302s, he was asked to change a negative

1 number to a positive number.

2 THE COURT: Was this for one facility or how many
3 facilities?

4 THE WITNESS: According to the 302s, it was for all
5 facilities. There was some other document that indicated
6 outpatient; but reviewing the 302s, it indicated all
7 facilities.

8 For whatever reason, I don't know why he didn't
9 change it to a positive, but he made it -- he changed it so it
10 wouldn't look as bad as it really was. And --

11 THE COURT: How much? Do you know the degree of
12 that? Do you have that information? No?

13 THE WITNESS: I don't -- I have a guess number that I
14 think I remember, but I don't remember positively.

15 THE COURT: Does the defendant know? Are you
16 planning to bring that up? Do you know? Go ahead.

17 MR. ESPY: We can give you that, Judge.

18 Q. And what was the significance of the same store volume
19 changes in the numbers?

20 A. It tells the reader the trend of the business and how it's
21 doing, how the facilities that have been opened during that
22 same comparative period, if it's getting better or worse, how
23 the business is doing.

24 Q. You said the reader. How is this number used by
25 HealthSouth?

1 A. Well, they use it internally for their own purposes, but
2 they would put it in and had put it into press releases. Every
3 quarter that went out about the financial statements.

4 But within it, they disclosed the actual numbers for
5 the same store sales. And in the narrative portion, the front
6 part of the press release, they also described it as well.
7 It's a key element that investors in the company were concerned
8 about.

9 Q. Just so I will be clear, Mr. Seiden, the false numbers
10 that Mr. Brown helped create with the CareMark stock sale,
11 that information made its way to the investing public; is
12 that correct?

13 A. Yes.

14 Q. And in what manner did it reach the investing
15 public?

16 A. It was presented in the -- it was included in the numbers
17 for the quarter ending September 30, 2002, and for the nine
18 month period ending September 30, 2002, which was included in a
19 press release and the actual Form 10-Q filed with the SEC.

20 Q. Based on your investigation, did you review the press
21 releases of HealthSouth where that information was
22 reflected?

23 A. Yes.

24 Q. Let me show you what I will mark as Government's
25 Exhibit Number 2 for identification, and ask you if you

1 recognize that document, Mr. Seiden?

2 A. Yes, I do.

3 Q. What is that document?

4 A. It's a press release, a copy of a press release, issued by
5 HealthSouth, that was issued on November the 5th, 2002.

6 Q. Now, the copy you have in front of you actually shows a
7 GX number at the top, does it not?

8 A. Yes, it does.

9 THE COURT: I understand about that. Go ahead.

10 Q. So have you had reviewed that press release,
11 Mr. Seiden?

12 A. Yes, I have.

13 Q. In preparation for --

14 THE COURT: Just for the record, this was an exhibit
15 in another case, and I understand that. That was just an
16 exhibit label in the other case. Go ahead.

17 MR. INGRAM: Yes, ma'am.

18 Q. And can you identify where the false numbers that
19 Mr. Brown was associated with are reflected in that press
20 release?

21 A. If you turn to Page 8 of 9, which will be indicated at the
22 top right-hand corner of the document, and underneath where it
23 says quarterly statistics.

24 THE COURT: I'm there.

25 A. It's my understanding it's the same store volume growth

1 that you see listed for these facilities.

2 Q. Now, that is just one of a number of different numbers
3 reflected in the press release; correct?

4 A. Yes.

5 Q. But that number is false; correct?

6 A. Yes.

7 Q. And that number was made available to the investing
8 public through the press release?

9 A. Yes.

10 Q. And just a couple of follow up questions. With regard
11 to the CareMark stock transaction, Mr. Seiden, did
12 Mr. Brown, based on your investigation, work with other
13 individuals in creating those false numbers?

14 A. Yes.

15 Q. Did he manage or supervise any other individuals at
16 HealthSouth to produce those numbers?

17 A. I believe, yes. I believe -- it's my understanding he
18 supervised Kathryn Fowler, but I don't know that for a fact.
19 So I just want to make sure you know that.

20 Q. And with regard to the same store volume --

21 THE COURT: He supervised her, or he just gave her
22 these numbers?

23 THE WITNESS: Well, he definitely gave her the
24 numbers. I don't know if he supervised her or not.

25 THE COURT: All right.

1 Q. And with regard to the same store volume false numbers,
2 are you aware of Mr. Brown working with any other
3 individuals to produce those?

4 A. Yes. He had worked with Mr. Owens who, at the time, was
5 the COO, Chief Operating Officer, President and Director of the
6 company; and Tad McVay who, I believe at the time, had been
7 promoted from treasurer to CFO, at least those two gentlemen.

8 MR. INGRAM: Pass the witness, Your Honor.

9 MR. ESPY: Your Honor, may it please the court, I
10 would ask the court to somewhat bear with me.

11 THE COURT: Sure. Would you like a few minutes?

12 MR. ESPY: No, ma'am. I'm ready to go. I think the
13 court is aware of this, but at about 3:00 o'clock yesterday
14 afternoon, we first received the affidavit and notification of
15 this witness.

16 I just want the court to be aware. Once we got it,
17 we got on it and reviewed it, but --

18 THE COURT: Are you ready to go forward today?

19 MR. ESPY: Yes, ma'am. We're not asking -- I just
20 may have to ask for --

21 THE COURT: You're not asking for an extension of
22 this sentencing date, okay, but I will certainly bear with you.
23 Go ahead.

24 MR. ESPY: Bear with me, Judge, if you would. I'm
25 usually a little more prepared.

1 THE COURT: That's no problem. Go ahead.

2 **CROSS-EXAMINATION**

3 **BY MR. ESPY:**

4 Q. Let me make sure I understand your testimony in your
5 affidavit. First of all, it is your testimony that the
6 conspiracy at HealthSouth and the fraud began on January --
7 at least by January 1, 1996?

8 A. Yes.

9 Q. And it is your testimony under oath that, based upon
10 your records and your review, Jason Brown committed no act
11 until July 19, 2002?

12 A. No, that would not be correct.

13 Q. When did he join the conspiracy? You testified
14 earlier, I thought, July 19th, 2002.

15 A. Maybe I misunderstood your question. If you're asking
16 when, for my purposes, I said he joined the conspiracy, it
17 would be July the 16th, 2002. However, in review of the 302s
18 and other interviews I was present in, I know that he had been
19 asked to and, in fact, did other acts that were improper to
20 conceal things from the auditors.

21 THE COURT: Other than the two things you've
22 testified about?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Do you remember what those were?

25 THE WITNESS: Yes. It had to do with the G5 aircraft

1 and a lease, and what they were trying to do and Mr. Brown
2 participated in was try to hide the fact from the auditors that
3 HealthSouth did not own the airplane -- I'm sorry -- that they
4 owned the airplane when, in fact, they were just leasing it.
5 So they were showing an extra asset on their books.

6 THE COURT: They were trying to show that they owned
7 it when they, in fact, only leased it?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: And he was involved in that?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Do you remember when that was?

12 THE WITNESS: I know it covered at least late 2001
13 and might have been earlier than that.

14 THE COURT: What other things, from your recollection
15 of reading the 302s, was he involved in?

16 THE WITNESS: That's all I can remember right now.

17 THE COURT: All right. Go ahead.

18 Q. (By Mr. Espy) And the two instances that we're here
19 today on involve the period July 16, I believe you said July
20 16, 2002. And, of course, the FBI raid took place in March
21 of 2003; is that correct?

22 A. Yes.

23 Q. Is that your understanding?

24 A. Yes.

25 Q. And I believe you have told the court the two instances

1 that you understand for which Jason Brown has pled guilty;
2 is that correct?

3 A. Yes.

4 Q. And am I correct --

5 THE COURT: I'm sorry, I'm going to stop you, but if
6 possible -- I mean, if you can't put your hand on it easily,
7 then don't worry about it, but I would like to see the 302 with
8 regard to that aircraft, if you have it. You have it?

9 THE WITNESS: Yes.

10 THE COURT: Okay, good. Go ahead.

11 Q. (By Mr. Espy) As I understand your testimony, the
12 other people, at least two of the other people involved in
13 the CareMark matter were Kathryn Fowler and Kay Morgan; is
14 that correct?

15 A. Yes.

16 Q. Tell the court what Kathryn Fowler did.

17 A. From what I recall, she was involved in doing the actual
18 wire transfers between the accounts.

19 Q. Let me be sure, your testimony is Mr. Brown provided a
20 spreadsheet, which I believe has been marked as Prosecution
21 1. He provided that spreadsheet to Kathryn Fowler; is that
22 your understanding?

23 A. Yes.

24 Q. And Kathryn Fowler --

25 A. I'm sorry, and Kay Morgan. It's my understanding it was

1 both of them.

2 Q. And would you tell the court the position held by
3 Kathryn Fowler?

4 THE COURT: I'm going to stop you one second.

5 MR. ESPY: Ma'am?

6 THE COURT: I'm going to stop you one second.

7 (Brief pause)

8 THE COURT: Go ahead.

9 Q. (By Mr. Espy) Would you tell the court the position
10 that Kay (sic) Fowler had with HealthSouth at the time?

11 A. I believe she was a vice-president in the treasury
12 department.

13 Q. And Mr. Brown was a vice-president in finance; is that
14 correct?

15 A. Treasury department.

16 Q. So they both were vice presidents?

17 A. That's my understanding, yes.

18 Q. Tell the court what position Kay Morgan had.

19 A. She was a vice-president as well.

20 Q. In what department?

21 A. I think -- I don't know what the official name was. I
22 think it was the accounting department.

23 Q. And who told these individuals or who above these
24 individuals, Brown, Fowler, Morgan, directed these things be
25 done or requested these things be done?

1 A. For the CareMark transaction?

2 Q. Yes, sir.

3 A. It would have been Tad McVay, who was then the senior
4 vice-president and treasurer, and Weston Smith, who was then
5 the CFO.

6 Q. Senior management?

7 THE COURT: Tell me Mr. McVay's position at the time.

8 THE WITNESS: Senior vice-president, you know, hyphen
9 treasurer.

10 THE COURT: And then Weston Smith was the CFO?

11 THE WITNESS: Yes.

12 Q. (By Mr. Espy) Is that the five people you understand,
13 it came -- would you agree that Weston Smith and Mr. McVay
14 were senior management?

15 A. Yes.

16 Q. And do you have any understanding what the family is?

17 A. Yes, I do.

18 Q. And were they family, members of the family?

19 A. Were who members of the family?

20 Q. Smith and McVay.

21 A. Yes.

22 Q. And then it came down to Jason Brown, Kathryn Fowler
23 and Kay Morgan; is that correct?

24 A. In your example, yes.

25 Q. And none of whom were in the family; correct?

1 A. That's not my understanding.

2 Q. Which one was in the family?

3 A. I believe Kathryn Fowler and Kay Morgan were part of the
4 family.

5 Q. You do believe that?

6 A. I do believe that based on the information I had at one
7 point.

8 Q. But Jason Brown wasn't a member of the family based
9 upon any information in the FBI files, was he?

10 A. Not that I know of.

11 Q. In terms of the CareMark stock, did that ever appear in
12 the Q -- the 10-K?

13 A. I'm sorry, you just combined two financial statements.

14 Q. In regards to the CareMark stock, that never appeared
15 in the 10-K; is that correct, that transaction?

16 THE COURT: 10-Q you mean?

17 MR. ESPY: 10-K.

18 THE COURT: What's a --

19 THE WITNESS: The 10-K would be the annual report
20 filed for the year, the entire financial reports, and the 10-Q
21 is for a specific quarter.

22 THE COURT: So did it? Was it in the 10-K?

23 THE WITNESS: The numbers?

24 THE COURT: Yes.

25 THE WITNESS: Yes.

1 Q. (By Mr. Espy) Was the 10-Q filed?

2 A. For 2001, yes.

3 Q. I guess I'm off base. It's your testimony to the judge
4 that CareMark that Mr. Brown was involved in, what Mr. Brown
5 was involved in, are you telling the judge that appeared in
6 any 10-K?

7 A. No. It appeared in a press release and in the 10-Q.

8 Q. And when did that take place, in November of 2002?

9 A. What took place, sir?

10 Q. The CareMark transaction for which you're testifying
11 about Mr. Brown, did that take place in November 2002? Is
12 that when it was publicly put out, as you say?

13 A. Yes, beginning then.

14 Q. That's right. Beginning then. So the first time there
15 was any public dissemination of information concerning the
16 CareMark 2002 transaction was in November of 2002?

17 A. Yes.

18 Q. Now, I believe this is Prosecutor's Exhibit Number 2.
19 Do you know what I'm talking about?

20 A. Yes, sir.

21 Q. And what you're saying is in this nine-page document,
22 which you would agree has a tremendous amount of numbers,
23 would you not?

24 A. Tremendous? It depends who the audience is. For the
25 people who really want to review this, the investors, the

1 people on Wall Street, no, I don't think it's tremendous.

2 Q. The one item on Number 2 that you say or that we agree
3 that Mr. Brown was involved in, same store volume growth on
4 Page 8; is that correct?

5 A. Yes.

6 Q. And am I correct that Exhibit 2 shows what was reported
7 to the public was a negative 3.8 percent?

8 A. Yes.

9 Q. Explain to the court how many divisions there were of
10 HealthSouth in November 2002?

11 A. I believe there were five.

12 Q. Tell the court the five divisions of HealthSouth in
13 November 2002.

14 A. I would have to go by what's in here because I know the
15 divisions changed over --

16 Q. No, sir. I want to know -- you're saying this is the
17 dissemination that Jason Brown caused a loss; is that
18 correct?

19 A. Yes.

20 Q. Tell the court how many divisions of HealthSouth were
21 involved in November 2002, if you know. If you don't know,
22 tell the court you don't know.

23 A. I don't know.

24 THE COURT: What do you mean how many divisions,
25 you're saying this number applies to, what are you trying to

1 say?

2 MR. ESPY: Your Honor, there's five divisions and the
3 number only applies to one of the five divisions. That's the
4 facts.

5 THE COURT: I would like to know the difference
6 between what he reported and what the true number was. Is
7 there a way --

8 MR. ESPY: I think I can tell you, and if you don't
9 mind, Mr. Brown will answer the question. They've got it, I
10 believe.

11 THE COURT: What's the answer?

12 MR. ESPY: I believe the answer is, Judge, that the
13 same store volume applies to only one division, which is the
14 outpatient division. It does not apply to the other four
15 divisions. And I think the numbers -- what is wrong is about
16 70,000 visits out of about two million.

17 Now, I believe that to be accurate. They have the
18 exact information. We've given it to them. We've gone over it
19 with them, so they will have the record, but that's my
20 recollection, Judge.

21 THE COURT: What change in percentage would it have
22 been? As opposed to a negative 3.8 --

23 MR. ESPY: They've got it, but can I approach him and
24 ask him?

25 THE COURT: I know this isn't really evidence. I'm

1 just trying to --

2 MR. ESPY: He believes, Your Honor, it was around a
3 negative nine, and this was about a negative four. That's his
4 recollection as I've just approached and asked him.

5 THE COURT: All right. Go ahead.

6 Q. (By Mr. Espy) And tell the court what does total
7 volume growth mean?

8 THE COURT: Where are you looking?

9 MR. ESPY: It's on Page 8, Your Honor.

10 THE COURT: The one right above it. Okay.

11 MR. ESPY: Yes, ma'am.

12 A. I'm sorry, could you tell me where you're looking?

13 Q. Sure. I'm looking on Page 8, and I'm going down in the
14 HealthSouth outpatient rehab. Maybe we ought to start with
15 explain to the judge again what you understand that same
16 store volume growth means. I want you, if you would again,
17 to explain that.

18 A. Yeah. My understanding is it's the total visits. It's a
19 patient statistic, how many patients have visited a HealthSouth
20 facility. In this particular example, he's referring to the
21 outpatient rehab division.

22 Q. And what does total volume growth mean, if you
23 understand?

24 A. My understanding is that's the absolute total number of
25 patients from one year or, in this example, from one quarter to

1 another quarter or comparing year to year.

2 The same store volume would be, again, just comparing
3 those facilities that were open for the exact same period of
4 time on a comparative basis.

5 Q. Are you aware of which of these numbers, be it total
6 volume patients, revenue per division, revenue per patient,
7 which of these factors are looked at primarily by investors?

8 A. Primarily?

9 Q. Yeah, if you know. I mean, is the more important
10 number total volume, revenue per division, and revenue per
11 patient? Isn't that the critical numbers that you're
12 looking at when you analyze this document?

13 A. I think you would have to just ask the individual who is
14 reviewing it.

15 THE COURT: Let me make sure, is there any dispute
16 that that's the only number, same store volume growth, or did
17 he falsify the total volume growth also? What's the answer?

18 MR. ESPY: I can answer from our standpoint. That's
19 the only thing they've ever contended he did, and that's the
20 only thing he ever told him he did. So we're dealing with one
21 number on that document, Judge.

22 THE WITNESS: Well, if I can just interject, because
23 I just want to make sure I didn't misanswer something before.
24 When he keeps referring to this document, this document also
25 includes the September 30 numbers, which my testimony is it is

1 wrong.

2 THE COURT: The September 30, where are you referring
3 to here?

4 THE WITNESS: You can start on Page 3 of 9.

5 MR. ESPY: I think he's talking about the CareMark;
6 am I correct?

7 THE WITNESS: That is correct.

8 THE COURT: So those numbers are in this document
9 also?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Where are they reflected here?

12 THE WITNESS: They would be -- I believe it's in the
13 revenue number for September 30, 2002, so it would be on Page 3
14 of 9 for the three months ending. It would also be in the nine
15 month period which begins on Page 4 of 9.

16 THE COURT: So it would be inflated by the number --
17 well, let me see.

18 MR. ESPY: That's where I was fixing to go, Judge.

19 THE COURT: All right. You can go there.

20 Q. (By Mr. Espy) In terms of CareMark, where in the
21 revenue numbers -- which number are we talking about?

22 I mean, for example, you said Page 3 it said
23 revenue. Are you talking about which number? Could you
24 just give us the number on Page 3 of Exhibit 2?

25 A. It would be included in the -- I believe in the revenue

1 number.

2 Q. Just give me the number.

3 A. The number, which number?

4 Q. The revenue number.

5 A. That's listed in here?

6 Q. Yes, sir.

7 A. 1,093,785,000.

8 Q. How much of the CareMark revenue is in that almost 1.1
9 billion dollars?

10 A. Approximately 27 million.

11 Q. Would that be total revenue?

12 A. Revenue, but that's not the gain number or the number that
13 goes down to the net income number.

14 Q. Give us the net income number.

15 THE COURT: Say that for me again.

16 THE WITNESS: Sure. The 27 million dollars that
17 everybody has been talking about with the CareMark, that would
18 have been the total cash proceeds and total revenue from the
19 transaction.

20 But part of it, like when you sell stock, you have a
21 basis, how much did you buy the stock for, and that amount
22 comes down to about 19 million dollars, which is reflected --
23 for example, if you go down to the line that says --

24 THE COURT: 19 million was the basis.

25 THE WITNESS: No. 19 million was the actual gain

1 that they reported they made on the sale. And when you go down
2 to the net income line, which is midway down, right above where
3 it says weighted average. And the net income for the three
4 month period would be 53 --

5 THE COURT: I'm sorry, I don't see it.

6 THE WITNESS: Right above where it says weighted
7 average, common shares. If you go down the column with the
8 September 30, 2002, you'll see a number that's 53,614.

9 THE COURT: I'm there.

10 THE WITNESS: Okay. Included in that number is
11 approximately -- well, actually, it's really about 27 million
12 dollars. The way they accounted for it, the gain part of 19
13 million dollars was improperly included in that 53 million
14 dollar number right there. So, basically, almost a third of
15 that number was from the CareMark stock being improperly
16 booked.

17 There's another component of like 8 million dollars
18 or 9 million dollars that had to do with a receivable that they
19 booked at the same time in 2002 as a result of this CareMark
20 transaction, which should have reduced this number even more.

21 Q. And if I'm correct, the other area you say that's
22 related to CareMark is on Page 4 where, in that almost three
23 billion dollar number, the twenty-seven million would be in
24 that; is that correct?

25 A. Yes, it would be there, and it would also be on Page 5 of

1 9 which continues on in that particular income statement. And
2 on Page 5 of 9, you come up with a net income number, right on
3 the top, the one thirty-five seven zero four number.

4 THE COURT: I'm sorry, let me find it.

5 THE WITNESS: Page 4 of 9.

6 Q. And that's millions, isn't it, 135 million; isn't that
7 correct?

8 A. 135 million, right, of which approximately 27 million
9 dollars of that is improper in the CareMark transaction.

10 Q. And all of these were disseminated in November 2002 for
11 the first time based upon your knowledge and information?

12 A. Yes.

13 Q. And the numbers had nothing to do with the division of
14 inpatient, did it?

15 A. I don't believe so.

16 Q. The division --

17 A. Right, yes, I don't believe so.

18 Q. The division of surgery?

19 A. No, I don't believe so.

20 Q. The division of diagnostic?

21 A. You know, again, I don't believe so, but I'm not sure
22 based on the 302s.

23 Q. The division of medical centers?

24 A. Don't know.

25 Q. You don't know?

1 A. I'm not sure. I know for sure the outpatient. That's all
2 I know for sure.

3 Q. Tell me, if you would, or tell the court what you
4 understand the elements of fraud are.

5 MR. INGRAM: I'm going to object to that, Your Honor.

6 THE COURT: Sustained. Let me say this: He's pled
7 guilty. And let me tell you something, 27 million dollars in
8 fraud to me is huge. That's all I can say, huge. And that's
9 what he has pled guilty to doing.

10 Now, we're trying to determine how much of what he
11 did -- the scope of his agreement with the other conspirators
12 and what was reasonably foreseeable to him. I know what fraud
13 is, and I don't need this agent to tell me.

14 MR. ESPY: Can I respond to that just appropriately?

15 THE COURT: You may.

16 MR. ESPY: All I was trying to say is he's talked
17 about fraud. I wanted to make sure he understood that it had
18 to be -- somebody had to rely upon something. He's trying to
19 tag him with like two billion dollars. We don't disagree with
20 the laws. We've never disputed that from day one. It's just
21 the way --

22 THE COURT: It's the scope of his agreement with the
23 other conspirators and then what was reasonably foreseeable.
24 That's what the case law says.

25 MR. ESPY: No, ma'am, I agree.

1 THE COURT: What are you trying to get him to say?
2 Mean, what are you trying to ask him then?

3 MR. ESPY: All I'm trying to say is it wasn't -- I
4 argue it was not reasonably foreseeable in July, when he became
5 a part of it, that this kind of loss would occur.

6 THE COURT: You can ask him that.

7 MR. ESPY: That's what I was --

8 THE COURT: Well, ask him that, not the elements of
9 fraud. You can ask him that. You can ask him that.

10 This is not relevant to this sentencing, but I'm just
11 curious, the more I learn about this from Mr. Owens' sentencing
12 and this sentencing, are you familiar with any of the other
13 large frauds in the country, Worldcom, Enron? Have you been
14 involved in any of that investigation?

15 THE WITNESS: No, just reading about it. And,
16 internally, at the SEC we get memos.

17 THE COURT: This is again not relevant, I'm just
18 curious. Do any of the other frauds have the number of
19 participants that HealthSouth had?

20 THE WITNESS: Not that I've seen.

21 THE COURT: Anything close to it?

22 THE WITNESS: No. Because I can also add there's a
23 lot more people. I think prosecutor discretion was used of who
24 to charge or not to charge. But I've never seen or heard of
25 this extent of people being involved; and, also, if I may add,

1 for how long this actually went on.

2 THE COURT: It's just mind boggling to this court.

3 THE WITNESS: And to me as well, Your Honor.

4 THE COURT: Go ahead.

5 Q. (By Mr. Espy) Let me ask you this: You've addressed
6 the stocks and bonds. Did HealthSouth default on any bond
7 interest payments?

8 THE COURT: I want to make sure you get back to that
9 question you were trying to ask him. That's very important,
10 and I was sustaining to the question. He can answer that, but
11 I do want you to get back, because I think that's important, to
12 where you were trying to go with that first question. Go
13 ahead.

14 THE WITNESS: I believe they did, and they
15 subsequently cured them overtime.

16 Q. If I read your affidavit correctly, I believe that Page
17 9 sets forth the bonds that your testimony -- when I say
18 Page 9, Page 9 of the affidavit -- sets forth the bonds and
19 the dates of issuance that you've addressed here this
20 morning in response to the prosecution; is that correct?

21 A. Yes.

22 Q. And the date that the bonds were issued?

23 A. Yes.

24 Q. And Exhibit 2, tell me, if you would, what Exhibit 2 of
25 your affidavit purports to tell us?

1 A. I would have to -- if someone could give me Exhibit 2.

2 THE COURT: Don't you have your affidavit in front of
3 you?

4 THE WITNESS: I've just got the actual affidavit, but
5 not the exhibits attached to it.

6 Q. I don't mind just giving him -- all I'm trying to
7 figure out is what exact -- here's just parts of it. It
8 says debt repurchases, I'm trying to figure out what that
9 is.

10 And that's just parts of them. I'm going to give you
11 all of them. I'm just trying to figure out what that exhibit
12 is purporting to represent.

13 THE COURT: While he's looking at it, let me find it.

14 MR. ESPY: It's Exhibit -- Judge, my page is not
15 numbered, Your Honor.

16 A. My recollection is some of these bonds were issued, say,
17 day one, year one. And over time, some of them were retired.
18 Some of them were repurchased by the company.

19 Q. Is this supposed to be representing -- I'm just trying
20 to determine what it represents. Does it represent sales,
21 does it represent repurchases by the company? What does it
22 represent is all I'm trying to figure out?

23 A. Repurchases by the company.

24 Q. Thank you. I believe that the HealthSouth stock closed
25 yesterday at \$4.55 a share?

1 A. I believe that is correct, yes, it did.

2 MR. ESPY: Can I have one minute, Your Honor, just
3 to confer with my partner?

4 THE COURT: Sure. Let me just tell you how the
5 schedule is going to go today, and I'm sorry, but I have
6 something that I'm going to be out for about two hours,
7 beginning about 11:20 to 1:30. Is that going to mess you up
8 tremendously?

9 MR. ESPY: I will do whatever I have to do, Your
10 Honor.

11 THE COURT: Well, I figured, you might have blocked a
12 whole day for court. I, of course, at some point, want to hear
13 your version, and I guess it's zero, but your argument as to
14 what you contend the loss figure should be.

15 Go ahead and confer with your partner, but I'm just
16 telling you I'm going to need to leave at 11:20 and resume
17 around 1:30.

18 (Brief pause)

19 Q. (By Mr. Espy) Has your affidavit in this case or a
20 similar affidavit by you been submitted in connection with
21 any of the other HealthSouth defendants?

22 A. Yes.

23 Q. Okay. Would you tell me who?

24 A. Generally speaking, I think everyone who has pled guilty
25 except for -- I don't believe I did one for Kathryn -- I know I

1 did not do one for Katherine Fowler. I do not believe I did
2 one for Will Hicks.

3 I'm pretty confident I've done an affidavit for
4 everybody else with respect to the accounting fraud, not the --
5 I think there were like three or four individuals who pled
6 guilty to the foreign payments or the bribery charges. I was
7 not involved with those sentencing.

8 Q. Let me just run some of them down to be sure. Kathryn
9 Fowler? I think you said no, but I want to be sure.

10 A. I'm positive I did not do a loss calculation for her.

11 Q. Any reason why not?

12 A. I wasn't asked.

13 Q. You weren't asked by the prosecution?

14 A. That is correct.

15 Q. Will Hicks?

16 A. I was not asked -- I don't believe I was asked to do a
17 loss calculation. I don't specifically remember. I do not
18 believe I was asked to do one.

19 Q. Virginia Valentine?

20 A. I remember testifying at her sentencing. I believe I did
21 an affidavit as well.

22 Q. Kathy Edwards?

23 A. Same as Virginia Valentine.

24 Q. Angela, and it may be Ayers, and I may be saying it
25 wrong, A-y-e-r-s?

1 A. Same as -- in fact, I can tell you, there was Emory
2 Harris, Virginia Valentine, Angela Ayers. I'm drawing a blank,
3 but all that were done in front of Judge Johnson in November
4 and December of 2003. They were all the same. So if I did an
5 affidavit for one, I did it for all of them, and I testified at
6 their sentencings.

7 Q. What about Ms. Morgan?

8 A. Kay Morgan was in that group as well.

9 Q. And what about Ken -- and I may mispronounce it -- I
10 think it's Livesay, L-i-v-e-s-a-y?

11 A. Yes.

12 Q. You did one for him?

13 A. I believe so.

14 Q. Okay.

15 MR. ESPY: Judge, that's all I have.

16 THE COURT: All right. Any redirect?

17 MR. INGRAM: Just briefly, Your Honor.

18 **REDIRECT EXAMINATION**

19 **BY MR. INGRAM:**

20 Q. Mr. Seiden, Mr. Espy just asked you about the different
21 divisions. Are you familiar with the relative size of each
22 of those different divisions?

23 A. I used to be, not any longer.

24 Q. Let me ask you a more specific question. With regard
25 to the outpatient rehab division, are you able to describe

1 how that relates in size to the other four divisions that
2 Mr. Espy asked about?

3 A. I believe that was one of the bigger ones, if not the
4 biggest of the divisions.

5 Q. And with regard to Mr. Brown's actions in generating
6 false numbers that made its way into the financial documents
7 and also made available to the investing public, is it fair
8 to say that providing false numbers would reasonably -- I'm
9 sorry, let me rephrase that.

10 Based on Mr. Brown's role in producing the false
11 numbers and given the fact that they made its way to the
12 public, is it reasonable to believe that the investing public
13 relied on those false numbers in making their investment
14 decisions?

15 A. They relied on those numbers, and they were relying on the
16 integrity of management who provided those numbers.

17 MR. INGRAM: That's all I have, Your Honor.

18 THE COURT: Anything further?

19 MR. ESPY: No, ma'am.

20 THE COURT: All right. If you would step down,
21 Mr. Seiden. Thank you very much.

22 MR. INGRAM: Your Honor, may Mr. Seiden be excused?

23 THE COURT: Yes, unless you think you might want to
24 recall him for any reason.

25 MR. ESPY: No, ma'am. I know of no reason.

1 THE COURT: Any further evidence from the government?

2 MR. INGRAM: No, Your Honor.

3 THE COURT: I would like, and maybe over the lunch
4 break if you could find the documents to verify -- the
5 defendant says it would have probably been a minus 9 percent as
6 opposed to 3.8 percent. If you can find any 302 with regard to
7 that. It's not crucial; but if you have it, I would like to
8 see it.

9 I would also like to see the 302 of the interview
10 that was referenced by Mr. Seiden pertaining to some
11 involvement by the defendant in some other fraud or false
12 actions with regard to HealthSouth.

13 MR. INGRAM: Yes, Your Honor. Both of those items
14 are in the same 302. This is Mr. Brown's 302 from June 16th,
15 2003.

16 THE COURT: If you would make a copy of it.

17 MR. INGRAM: I would be happy to. It doesn't --

18 THE COURT: Do you all have it with you or not? If
19 not, I'm going to give it to you. I'm going to read it over
20 the break, and I will let you have a copy so you all can read
21 it.

22 MR. ESPY: If we could have a copy, too, because we
23 don't.

24 THE COURT: All right. I will read it, and then we
25 will talk about it after lunch. You can tell me what you want

1 to say about it.

2 MR. INGRAM: It doesn't reflect the change that was
3 asked of Mr. Brown for 2002. It states in comparison to what
4 the number was the previous year 2001.

5 It basically states that Brown recalled in November
6 of 2002 he was asked to attend a meeting, at which time Tad
7 McVay and Bill Owens directed him to change the same store
8 numbers in the third quarter of 2001 and to lower this number
9 to a negative three to four percent.

10 He stated that, in the preceding year, this figure
11 had been a negative 14 percent, and that by changing the
12 numbers or by adding numbers to the closed facilities for the
13 third quarter of 2001, it made the numbers for the third
14 quarter of 2002 look better, as if they were doing more
15 business in 2002.

16 This number showed up in the statistics page of the
17 press release which was submitted to Wall Street and would have
18 been a percentage of an actual number.

19 THE COURT: All right. Thank you. If you will make
20 a copy. Any further evidence from the government with regard
21 to the loss?

22 MR. INGRAM: No, Your Honor.

23 THE COURT: All right. Any evidence from the
24 defendant with regard to the loss?

25 MR. ESPY: No, ma'am.

1 THE COURT: All right. I would like you to make your
2 argument to me before lunch as to what you contend the loss
3 figure should be and your rationale for it.

4 I mean, I think the government's argument is
5 contained in Mr. Seiden's affidavit and testimony, so let me
6 hear from you.

7 MR. ESPY: And, Your Honor, let me say this: I
8 wanted to be candid with the court. I was not trying to be --
9 we acknowledge that the loss at HealthSouth is large. We're
10 not trying to say it wasn't.

11 All we were trying to show by a document that we
12 received within a couple of hours of this hearing, even though
13 this hearing has been set for a considerable amount of time,
14 all I wanted to do, as we looked at it quickly, was simply to
15 say to Your Honor, Jason Brown's guilty of a crime. He's
16 acknowledged he's guilty of a crime.

17 He acknowledged exactly what he did. He's
18 acknowledged that in November of 2002 this was disseminated to
19 the public. But everybody in this whole case, Your Honor, has
20 said this started back in 1996 at least.

21 And my only contention was, Judge, this young man,
22 with what he did, didn't cause the loss that they're saying. I
23 don't doubt that HealthSouth covered that loss. I'm just
24 saying he didn't -- I don't know of anyway you can determine
25 what loss he covered, other than he was part of a loss that was

1 substantial. I'm not trying to argue otherwise, Judge.

2 And the only questions I was trying to determine from
3 him and these other people was to testify what loss -- for
4 example, I was particularly interested in Kathryn Fowler. I
5 mean, she is the one who moved the money; but yet, apparently,
6 there was no attempt to show -- I mean, he gave her the
7 numbers. She moved it, and Kay Morgan.

8 That was the question, how did they determine that.
9 Obviously, they didn't. They didn't show that. In Katherine
10 Fowler, they contended there was no loss. I filed that with
11 Your --

12 THE COURT: What do you mean they said there was no
13 loss? Did you all say that at her sentencing hearing?

14 MR. INGRAM: No.

15 MR. ESPY: And maybe I used the wrong words. I filed
16 a copy of that with the court, which is under seal, and I
17 believe it's on Page 11, Number 33. And if I used the wrong
18 language, I apologize.

19 But, basically, she wasn't asked for -- I say no
20 loss, maybe I'm using the wrong language, but whatever that
21 said. So all I'm trying to say, Judge, is --

22 THE COURT: Wait just a second.

23 MR. ESPY: I apologize.

24 THE COURT: I'm just trying to find where the loss --

25 MR. ESPY: I may have used the wrong language. But

1 my argument is, Judge, it's my understanding, and I wasn't
2 present --

3 THE COURT: Actually, it's just that there was no
4 information at the time. I don't know what the judge
5 eventually did with regard to the testimony.

6 MR. ESPY: She got probation.

7 THE COURT: Well, I know, but there was a finding as
8 to loss. My recollection is -- I don't know if it was this
9 case that was reversed or not.

10 MR. ESPY: It wasn't Fowler.

11 THE COURT: But I don't know what the judge
12 eventually found. And, as I said, in every case, I'm looking
13 at the evidence presented in this case. Other judges looked at
14 the evidence and possibly viewed the culpability of defendants
15 differently than other judges.

16 I happen to think this is a massive, massive fraud.
17 As I say, to me it's a mind boggling situation with the number
18 of people that got involved in this and of the character of
19 some of the people that got involved, including your client,
20 who had an exemplary background and, apparently, other than
21 getting involved in this, had an exemplary life.

22 MR. ESPY: Never had any problem.

23 THE COURT: And there are other defendants like
24 that. But the public was greatly harmed by the collective
25 actions of many, many people, including your client.

1 But I'm going to look at the evidence presented in
2 this case and make my finding as to the amount of loss. But,
3 basically, what you're saying with regard to your argument
4 against the calculations in the presentence report is that
5 because he was only involved for a limited time, it's not fair
6 to attribute this loss to him; is that right?

7 MR. ESPY: That is correct. And we've said that all
8 -- we've never said that he didn't do something wrong and,
9 obviously, something, but that the burden was on them to show
10 what he did.

11 I'm not trying to -- but, Judge, I just don't think
12 common sense -- that it makes sense that a conspiracy that
13 started at least six or seven years before he ever got in it,
14 that he then caused the loss that goes back to '96. It defies
15 common sense. And that's been my argument from day one about
16 it.

17 THE COURT: I do want to make sure that the record is
18 clear that, although you did not receive Mr. Seiden's affidavit
19 until yesterday, the way he calculated it -- I mean, it's all
20 in Paragraph 61 exactly what's in his presentence report --

21 MR. ESPY: I know.

22 THE COURT: -- and including the exact numbers are in
23 the presentence report that you've had for years.

24 MR. ESPY: I don't dispute --

25 THE COURT: I want to say and including his method of

1 calculating the loss. All of that is in the presentence
2 report. So his method of calculating the loss is something
3 you've had for years, and the exact numbers that he testified
4 to you've had for years.

5 MR. ESPY: I'm not trying to argue any prejudice,
6 Judge.

7 THE COURT: I know. I just want to make sure for the
8 record --

9 MR. ESPY: If I was, I would ask for a continuance
10 that I believe the court would give me.

11 THE COURT: I just want to make sure the record is
12 clear that those numbers are in the presentence report and have
13 been there and the method that he used, and you've had them for
14 quite sometime.

15 MR. ESPY: I don't deny that, Judge, but we didn't
16 have that 89 page document until yesterday, and it says a lot
17 more than the presentence.

18 All I was trying to tell the court is I typically
19 come in here and I go bam, bam, bam and ready to go. But when
20 I got the thing at 3:00 and I got to it at 6:00 o'clock last
21 night, I had to do the best I could do with what I had. That's
22 all I was saying.

23 THE COURT: Well, the crux of his testimony is
24 contained in Paragraph 61 of the presentence report, and I
25 would have to look to compare it to the number in the

1 affidavit, but, I think that's --

2 MR. ESPY: If the court says that, I have no --

3 THE COURT: Well, that's how he came up with the
4 number. The bottom line to me is how he came up with the
5 amount of loss that he says should be attributed to this
6 defendant, and that's contained in the presentence report in
7 Paragraph 61.

8 MR. ESPY: And I've never really contested the
9 number. My position has been I don't see how Mr. Brown could
10 be attributed to have caused that whole number. That's been
11 the point.

12 THE COURT: Right. And I, for the record, again,
13 Mr. Espy, want to make sure that you are not asking for a
14 continuance or any time to retain your own expert, because if
15 you are, I certainly will give it to you.

16 MR. ESPY: I know you will, but I'm not.

17 THE COURT: Okay. We're going to be in recess
18 until -- yes?

19 MR. INGRAM: I'm sorry, Your Honor. Just one point
20 to make. I know the court needs to go. The government's loss
21 calculation is only intended to present what is reasonably
22 foreseeable as a result of this defendant's actions. It is not
23 intended to present Mr. Brown with the responsibility for the
24 entire loss.

25 THE COURT: Well, I've already made a finding with

1 regard to Mr. Owens that the fraud was a great deal more that
2 was attributed to him than as to this defendant. What you
3 presented in his case was a loss amount much greater than what
4 you're asking here.

5 But I'm going to go back and look at all this. We'll
6 be in recess until 1:30.

7 MR. ESPY: Can I ask a question so we can be
8 prepared?

9 THE COURT: Sure.

10 MR. ESPY: Could you give us some idea, Judge, of
11 kind of where we're going from here in terms of --

12 THE COURT: The first thing when we come back, I'm
13 going to tell you my loss calculation. Since there are no
14 other objections to the Guidelines, I'm either going to adopt
15 them or find a number lower than what's there if I think that's
16 the right thing to do, but I'm going to go back and look at
17 this.

18 I will make the Guideline calculations, and then I
19 will give you time for allocution and the government time for
20 allocution and impose sentence. So it shouldn't be too long
21 depending on the length of time that you all want to speak.

22 And I will say, for the record, that I've read all
23 the letters. They were most impressive, and I will say all
24 that later again, too. But you can have as much time as you
25 wish this afternoon to speak on behalf of your client.

1 But, basically, I'm going to come right in and make a
2 finding and make the Guideline calculations, and then we'll
3 proceed with hearing from both sides.

4 MR. ESPY: Does Your Honor typically go to the
5 government first and ask their thoughts?

6 THE COURT: I hear from the defendant first, and then
7 I hear from the government. But I think it would be helpful to
8 me, in thinking about this over lunch, although I'm going to be
9 gone most of the lunch hour, what does the government, and I
10 will hear from you why later, but what do you plan to ask for
11 this defendant?

12 MR. INGRAM: The government's recommendation, Your
13 Honor, is Mr. Brown's Guidelines were 60 months, and the
14 government has filed a 5K motion on behalf of Mr. Brown. The
15 general practice of our office is that a maximum of fifty
16 percent reduction be requested in appropriate circumstances.
17 Accordingly, the government is asking for a sentence of thirty
18 months.

19 THE COURT: All right. We'll be in recess until
20 1:30. Thank you very much.

21 (Lunch recess)

22 THE COURT: I'm going to overrule the defendant's
23 objection to the loss calculation and make some findings on the
24 record.

25 U.S. Sentencing Guideline Section 2B1.1, Application

1 Note 3(c), states that "The court need only make a reasonable
2 estimate of the loss. The estimate of the loss shall be based
3 on available information, taking into account, as appropriate
4 and practicable under the circumstances, factors such as the
5 approximate number of victims multiplied by the average loss to
6 each victim."

7 In United States versus Hunter, 323 F.3d 1314 (11th
8 Cir. 2003), the Eleventh Circuit held that, "In order to
9 determine the defendant's liability for the acts of others, the
10 district court must first make individualized findings
11 concerning the scope of the criminal activity undertaken by the
12 defendant before it can determine reasonable foreseeability."

13 The defendant entered a conspiracy at the request of
14 senior officers in the corporation, including Bill Owens,
15 Weston Smith and Tad McVay. The defendant performed at least
16 two significant overt acts to achieve the ends of the
17 accounting fraud, the CareMark transaction and the same store
18 sales manipulation.

19 These acts, including the elaborate -- I'm not sure
20 if that's the right way to call it, sales manipulation, but the
21 same store patient information manipulation. These acts,
22 including the elaborate spreadsheet prepared in the CareMark
23 transaction, were designed by the defendant to conceal the true
24 financial condition of HealthSouth. And these acts resulted in
25 the dissemination of false information to the investing public

1 through press releases.

2 The fact that senior officers were directing the
3 defendant to perform accounting fraud on more than one occasion
4 made it reasonably foreseeable to the defendant that his
5 co-conspirators would design, direct and make other false
6 entries to commit the accounting fraud that led to the fall of
7 the stock price.

8 According to Paragraph 10 of the Information to which
9 the defendant pled guilty and Page 11 of the factual basis for
10 his plea, the defendant became aware of the shortfalls and
11 potential adverse effect of HealthSouth's stock price if these
12 shortfalls were disclosed to the public.

13 It is noted that this court found in the case of
14 United States versus Bill Owens that the overall loss for the
15 entire conspiracy was over six billion dollars. Thus, the
16 amount attributed to the defendant in the presentence report in
17 this case and in Mr. Seiden's affidavit is substantially lower
18 based on the scope of his agreement and the reasonable
19 foreseeability of the acts of others in furtherance of the
20 jointly undertaken criminal activity.

21 The probation officer used the method suggested by
22 the Eleventh Circuit in United States versus Snyder, 291 F.3d
23 1295, 1296 (11th Cir. 2002). The court in Snyder suggested a
24 method of loss which takes into account the fact that the stock
25 was not completely worthless after fraud disclosure, but simply

1 fell in value, indicating that the fraud artificially inflated
2 the stock's trading price.

3 The court noted that, while this method of valuing
4 loss, subtracting the stock price after the fraud from the
5 average stock price over the life of the fraud, may be
6 appropriate in many cases involving securities fraud, it is
7 certainly not the only method available to the court. The
8 court feels that in this case the Snyder method is appropriate.

9 The Snyder method involves an initial calculation
10 using the weekly average closing price during the life of the
11 fraud. This method was used by the probation office because it
12 takes into account the fact that HealthSouth's stock was not
13 worthless after fraud disclosure but simply fell in value,
14 indicating that the fraud artificially inflated the stock's
15 trading price.

16 The method involves an initial calculation using the
17 weekly average closing price during the life of the fraud, the
18 time period of the defendant's criminal activity within the
19 scope of his agreement in the conspiracy.

20 According to Neal Seiden of the Securities and
21 Exchange Commission, from July 16th, 2002 to March 18th, 2003,
22 which focuses on the period from the time the defendant entered
23 the conspiracy until the date the offense became public, based
24 upon the closing price of each week during that period, the
25 average trading price of HealthSouth stock during the time of

1 the defendant's involvement in the accounting fraud was \$5.06.

2 Then the average closing price after the fraud was
3 calculated, focusing on the time period between the resumption
4 of trading and shortly before the introduction of an outside
5 factor into the stock's price, that being when HealthSouth
6 announced that it believed it could avoid bankruptcy, from
7 March 26th, 2003 to the week ending July 3rd, 2003, the average
8 weekly closing price was .34.

9 The difference between the average price before the
10 fraud and the average price after the fraud was calculated is
11 \$4.72. If you multiply the number of innocent outstanding
12 shares times \$4.72, it results in a total loss to stockholders
13 of \$1,868,291,182.

14 Again, the loss calculation only encompasses the
15 period of the defendant's involvement and its aftermath.

16 The court is of the opinion that the appropriate
17 method of loss calculation and attribution to this defendant is
18 the Snyder method for the period of Mr. Brown's involvement.
19 So the objection to the loss calculation is overruled.

20 There are no more objections, Mr. Espy; is that
21 correct?

22 MR. ESPY: Yes, that is correct, Your Honor.

23 THE COURT: Having ruled on all the objections, the
24 court makes specific findings that the Offense Level is 43.
25 The criminal history category is I.

1 Pursuant to U.S. Sentencing Guideline Section 5G1.3,
2 the Advisory Guideline term of imprisonment is 60 months.
3 Further, the supervised release period is from two years to
4 three years, and the fine range is from 25,000 to \$250,000.
5 Restitution is an issue in this case.

6 Mr. Espy, if you and Mr. Bain, am I pronouncing your
7 name correctly?

8 MR. BAIN: Yes, Your Honor.

9 THE COURT: And Mr. Brown would come to the podium.
10 All right. Mr. Espy and Mr. Bain, do either you, Mr. Brown or
11 both have anything to say in mitigation or otherwise before the
12 court pronounces sentence?

13 MR. ESPY: Yes, ma'am. If it would be appropriate, I
14 would like to make a few brief remarks and then --

15 THE COURT: I think what I will do, if it's okay, I'm
16 going to let Mr. Brown and, Mr. Bain, if you're not going to
17 speak right now, I will let you all sit down. And then if they
18 plan to speak, they can come back up, so they don't have to
19 stand there while you speak. All right. You all can sit down,
20 and then, Mr. Brown, you can come back up in a minute.

21 MR. ESPY: Your Honor, I'm going to speak for
22 counsel, but Mr. Brown would like to make a statement to the
23 court.

24 THE COURT: Sure.

25 MR. ESPY: Your Honor, may it please the court, we

1 have filed a memorandum in advance of this proceeding and
2 setting forth our presentation and request of the court. So, I
3 certainly do not intend to go back over that, but rather I
4 would like to be brief in maybe bringing to the court certain
5 facts that have not been made or maybe highlighting some that
6 have been made.

7 First and foremost, Jason Brown has accepted full
8 responsibility for his conduct. He has made no excuses for
9 what he has done. Secondly, he has embarrassed and publicly
10 humiliated his family, for which he absolutely acknowledges.
11 His actions will affect him, not only today, but for the rest
12 of his life. It doesn't matter, and I don't mean that in an
13 improper manner, Your Honor, he's branded. So he sits here --

14 THE COURT: You know what, maybe, maybe not. Yes, in
15 a way, yes, but I believe by doing what he's done and coming
16 forward -- there were one or two letters, it seems to me, that
17 said they were proud of him, that he has done what he has done
18 in the sense of accepting responsibility and moving on with his
19 life.

20 And I'm hopeful that this will not -- yes, he will
21 always have a felony conviction for this, but he's one of many
22 who came forward and accepted responsibility. And I think
23 people can put mistakes behind them, even criminal conduct, and
24 have a very productive and successful life. So I'm hopeful
25 that Mr. Brown is in that group.

1 MR. ESPY: Judge, I appreciate that, and that's our
2 hope. Thank you very much.

3 Your Honor, as we've set forth, Jason is 36, and I
4 would respectfully say to Your Honor that except for about a
5 five-month period of his life, in the July to November time
6 frame of 2002, he's led certainly a good life, if not an
7 exemplary life.

8 And I think it may be appropriate here, Your Honor --
9 you had asked earlier about this -- there was one instance you
10 had asked about the bank compliance certificates that had to do
11 with the airplane. I want to make it clear that he did not at
12 any time file a false bank compliance certificate regarding the
13 airplane.

14 In the treasury department where he worked, he filed,
15 when it was his responsibility, he filed a bank compliance
16 certificate quarterly showing the airplane was leased and
17 showing it was true. So I do want to make clear that this --
18 that was the initial interview where Gerry Kelly was asking him
19 about anything he had ever done or ever heard or anything, and
20 he was saying that, but I do want to make that clear.

21 And, Judge, I would like to say, and I think it's
22 clear, that Jason was not a member of senior management. He
23 was not ever a member of what is called, as I understand it,
24 the family that was having meetings. He was not middle
25 management. At best, he was lower middle management. He was

1 one of fifty plus vice presidents there.

2 He's got a good family. He's got a wife, and he's
3 got a child. When he was contacted by the authorities, he went
4 forward. He came forward. The very first time he admitted and
5 acknowledged everything he had done, pledged full cooperation
6 for that. Your Honor, that was in June of 2003, two and a half
7 years ago. He pled guilty, as I recall, Your Honor, before
8 Your Honor on July 7, 2003, which is two years and five months.

9 We would have looked to have gone ahead and be
10 sentenced earlier and gotten this behind us, but we cooperated
11 with the people with whom we were working. They didn't want
12 that to happen and fine, and we continued to put it off as he
13 struggled to -- our concern was getting jobs and trying to go
14 forward with his family.

15 THE COURT: And, as I said in Mr. Owens' sentencing,
16 that is true, there is some punishment associated with the fact
17 of the delay, there's no doubt about it, and the uncertainty
18 associated with the delay. So I understand that.

19 MR. ESPY: And, Your Honor, that did put him in a
20 situation in terms of trying to do certain things, but he
21 didn't hesitate to get out and try to get a job. He filed
22 resumes everywhere, applications everywhere. He finally got a
23 job in a clothing store. His wife got a job as a server at a
24 restaurant, and he finally got a good job as a financial
25 consultant with a construction company.

1 So he hasn't quit. He's gone forward. He went out
2 there and got a job. He realized his responsibilities to his
3 wife, to his child, to his family, to take care of them, and
4 he's done all of that, Your Honor.

5 And, Your Honor, the government does not ask any
6 forfeiture in this case, because he didn't -- he didn't make
7 any money on what happened. He did not do this for a profit.
8 He didn't sell any stock. He didn't get a bonus. He made a
9 criminal error and criminal mistake, which he will regret for
10 the rest of his life, but he didn't do it out of greed.

11 THE COURT: And just in case I forget to note it
12 later, I am aware that many of the people who did get huge
13 bonuses and were involved for years got probation, and I'm
14 aware of that.

15 MR. ESPY: And I was just going to mention that, and
16 I know the court is aware of the others, so I'm not going to go
17 into that.

18 I just come here on the merits of Jason Brown, and I
19 think we've said everything we can say, Your Honor. We've laid
20 it out as best we can. We've got one little span of his life,
21 and that's the only span, and we would ask the court --

22 THE COURT: My problem, Mr. Espy, and I will tell
23 Mr. Brown this is, there is a great disparity in sentences in
24 some based on the involvement. It's not necessarily fair;
25 different judges have sentenced different defendants, so

1 different judges have viewed the case differently. And I
2 clearly view it differently than some of my colleagues, who I
3 respect very much.

4 I have to look at the fact that, even though it was a
5 very short period of time, the amount of fraud that he was
6 involved in was 27 million dollars. Forget the
7 under-estimation of outpatient facilities and the number of
8 patients. I do understand how management is telling you to do
9 things, but I just don't understand why so many people out
10 there went along with this year after year. And I know he
11 didn't do it year after year. Many did, many did who got
12 probation.

13 But it's an enormous fraud collectively, but this
14 defendant's own involvement was -- even though for a short
15 period of time, why didn't he say I'm not going to do this.
16 And he didn't just do one little sheet. He had to go through a
17 whole spreadsheet, come up with a price that was sold that day
18 to make sure the number of shares weren't over what was sold
19 that day. It took some time. It was involved for what he did.

20 Anyway, I understand, and I certainly was impressed
21 by the letters, and I will maybe read some of them -- well, I
22 will wait until Mr. Brown comes up and talk about that, but
23 there were some very impressive letters that were written on
24 his behalf.

25 MR. ESPY: Not being there, I probably can't answer

1 the court's question, but as I understand, from talking both to
2 the government and my client and other people that were
3 involved, the intimidation and the coercion, I don't mean in
4 terms of a gun to your head, was pretty intense from what I
5 understand.

6 Judge, if I may just close, you had brought up one
7 thing I did want to comment; and, obviously, we're looking for
8 what's fair and what's right. As the CPA commented, in the 27
9 million dollars, the two people involved with him, one his
10 equal, Kathryn Fowler got probation. One, his superior, Kay
11 Morgan got probation, and I think a short home detention. And
12 I simply --

13 THE COURT: And Tad McVay, I believe, got probation,
14 and Weston Smith, I think, got 27 months, but Tad McVay, who
15 was involved --

16 MR. ESPY: Who was up at the high level.

17 THE COURT: And for a long period, much longer period
18 of time. Did he get probation? Probation.

19 MR. ESPY: Yes, ma'am. I appreciate your comments.
20 Judge, Jason would like to make a comment to the court or
21 statement, and we appreciate any consideration the court could
22 give him in sentencing.

23 THE COURT: Sure. If you'll stand up here with him
24 when he comes. I'm sure you will. Let me also, before I hear
25 from you, Mr. Brown, Mr. Espy is a long-time acquaintance. I

1 would like to say friend, but we don't ever see each other
2 anymore, but he has my utmost respect. You could not have
3 picked a finer, better lawyer to have before me or before any
4 judge. And I thought the sentencing memorandum he and Mr. Bain
5 did on your behalf was outstanding.

6 I guess I will hear from you, and then I will read
7 some quotes from some of the letters. Go ahead.

8 THE DEFENDANT: I made two very poor decisions in
9 2002. It was out of character for me. I regret it everyday.
10 And if I had the chance to go back, I would obviously go down a
11 different path.

12 This has caused a great deal of humiliation and
13 embarrassment to me and my family, and I'm very sorry for
14 that. However --

15 THE COURT: You have many people back there who love
16 and support you.

17 THE DEFENDANT: Right.

18 THE COURT: And they should, and you, obviously, are
19 deserving of that love and support.

20 THE DEFENDANT: Well, thank you. Since 2003, July of
21 2003, I've gained a great deal of perspective about what is
22 important in life, and I've had two and a half years to think
23 about that. I have certainly a better appreciation now than I
24 did then.

25 I know what I did was not right. I have always

1 respected and followed the rules and the laws of this country,
2 and my intention was not to harm anyone. It was certainly not
3 to make any money for myself because I did not.

4 THE COURT: Right.

5 THE DEFENDANT: But it was a poor decision, and
6 I have learned a very painful and a very difficult lesson, and
7 I am very sorry for that.

8 Judge Blackburn, I would like to ask for mercy in
9 your sentencing of me today, so that I can continue to rebuild
10 my life. Thank you, Your Honor.

11 MR. ESPY: Can we step back, Your Honor?

12 THE COURT: Maybe I will just do this right now, and
13 I actually didn't highlight them, but I turned them down. Not
14 that they weren't all wonderful, but I did turn down some. I'm
15 sure you've seen these, but I just want to make some statements
16 briefly from some of the letters into the record.

17 I heard from your counselor. He said that he had not
18 been requested to write on your behalf, but had voluntary
19 chosen to do so. And there was something else in here.
20 Unfortunately, when I was reading these last night, I didn't
21 have anything to highlight with.

22 He said, "Throughout the years I've been working, I
23 have worked with a number of individuals who have been in
24 similar situations such as Jason, but this is the first letter
25 I have ever written of this kind" -- and, again, he wrote it

1 unsolicited -- "in that Jason stands out as an individual who
2 has truly recognized what he has done and has made specific
3 changes to be different and to contribute to society."

4 Your father wrote a beautiful letter, and I know
5 you've read it, but he said, "I am proud of Jason and the
6 manner in which he has handled this adversity. He was raised
7 to be honest, dependable and loyal, and he strove to be all of
8 those things while at HealthSouth. We feel that no one could
9 have tried harder than Jason to move forward with his life
10 following his dismissal from HealthSouth. I respectfully
11 request that Jason's background of extreme loyalty, excellent
12 work ethic and outstanding character be considered when
13 deciding his sentence."

14 I received a letter -- and again, these letters, I
15 read them all, and I'm certainly not trying to say that the
16 others weren't equally impressive, but Ms. Hester wrote, "The
17 polite, hard working, dependable young gentleman are apt
18 descriptions of Jason, always respectful of authority figures."
19 Of course, that could have played adversely in your situation
20 here. "He consistently displayed a cooperative attitude.
21 Jason demonstrated a strong commitment to family as a young
22 person, and that commitment is evident now with his wife and
23 daughter. The manner in which Jason has conducted himself over
24 the past several years speaks toward his commitment to family
25 as well as his exemplary character. He has shown tremendous

1 resilience during adversity."

2 I received a letter from someone who works at
3 Tuscaloosa High School. "I've known Jason since he was a small
4 child through our mutual church affiliation. I've always found
5 him to be an honest, outstanding young man. He was diligent,
6 conscientious and hard working in his class performance. He
7 prepared every assignment thoroughly, promptly and well,
8 consistently making high grades. In my role as National Honor
9 Society sponsor, I observed Jason as he participated in extra
10 curricular activities. I found him to be a good, solid
11 citizen, trustworthy and capable in all his endeavors."

12 I'm going to read just a few more, but I will make
13 this observation: Sometimes when I sentence people, and I say,
14 when I read the letters, that I don't know if I was on the
15 other side of this bench and standing where you are, whether
16 people could write the same kind of letters or whether I could
17 find the same number of people to write the number of letters
18 that have been written about some defendants.

19 You're one of not many, but I have had other
20 defendants who had wonderful letters written about them, but I
21 certainly think you are to be commended for having this number
22 of people and the quality of people who have written about you
23 to say these things.

24 One person, Mary Ann Brown wrote, "While I deplore
25 the fraud that took place at HealthSouth, it has become

1 apparent that many employees became involved during the course
2 of conducting their jobs without actually realizing the grand
3 scope of the situation. Jason is one of these people. He is
4 intelligent, honest and hard working."

5 This is from your mother. "Of course, from a
6 mother's perspective, I feel that he has been punished so much
7 already. I also know he feels great remorse and has been fully
8 cooperative in the whole HealthSouth investigation. We are
9 very proud of him and will appreciate your leniency in the
10 rendering of his sentence."

11 You have a co-worker who wrote, "I'm writing you
12 today in support of former co-worker Jason Brown. Obviously,
13 Jason made some mistakes. His mistakes were mistakes in
14 judgment of who he should trust. He's a good man, husband and
15 father. I worked at HealthSouth for five years." I'm not
16 reading every sentence. "But I knew the culture that existed.
17 I knew the pressure that existed. I knew everyone involved in
18 the HealthSouth scandal, and this is the only letter I am
19 writing. At the end of the day, I am hoping that this kind of
20 support from one of the common, but equally hurt former
21 HealthSouth employees means something to you."

22 I want you to know that I carefully considered all
23 these letters. And because of what has happened in the other
24 cases, your sentence is more difficult than it might have
25 otherwise been for me.

1 I'm going to ask you to be seated, and I am going to
2 hear from the government. And then I actually am going to take
3 about a ten or fifteen minute break before I impose sentence.
4 All right.

5 MR. INGRAM: Thank you, Your Honor. May it please
6 the court. Your Honor, Mr. Brown, as Mr. Espy pointed out, was
7 not a member of senior management, but he did become a
8 full-fledged member of the team of executives at HealthSouth
9 who engaged in furthering a conspiracy for the purpose of
10 misleading the investing public as to HealthSouth's true
11 financial picture. And to that extent, he did play an integral
12 role in furthering the objectives of the conspiracy.
13 Notwithstanding the fact it was only for a five-month period,
14 he did a lot in the five months that he was involved.

15 Mr. Brown did cooperate once he was approached. And
16 I will note again for the court that the government did file a
17 5K motion on Mr. Brown's behalf for his cooperation, and he did
18 everything that was asked of him once he came forward.

19 However, I would like to point out, he did not come
20 forward when the fraud broke in March. He did not come forward
21 until the FBI knocked on his door three months later on. Once
22 approached, he was cooperative; but to that extent, the FBI had
23 to go to him first to bring him forward.

24 A couple of things I would like to touch on just in
25 the defendant's sentencing memorandum. To me it seemed like

1 that Mr. Brown was attempting to minimize his participation in
2 these two events. The words "limited participation" with
3 regard to CareMark, correcting a mistake, he had no knowledge
4 and did not participate in moving money.

5 Well, the fact remains, Your Honor, that Mr. Brown is
6 a vice-president of finance at a Fortune 500 company, and he's
7 approached in July of 2002 by the CFO of the company and by the
8 treasurer of the company to do something, which it would seem
9 to anyone, even without an accounting background, that that's
10 simply wrong. Stock that was sold in 2001, we need you,
11 Mr. Brown, to help us show that it's still on the books, and we
12 sold it again. Well, it doesn't take an accounting background
13 to recognize what's wrong.

14 And as the court noted and as has been the case with
15 each of these defendants that this court and other courts have
16 considered in imposing a sentence, no one ever came forward and
17 said no. No one said no to what they were asked to do. They
18 went along for whatever reasons, whether they profited greatly
19 or not, they went along knowing what they were doing was wrong.

20 And with regard to the CareMark, he also, in addition
21 to the CFO and the treasurer, he was working with Ms. Fowler,
22 Ms. Morgan. And this is in mid 2002. This is after
23 Sarbanes-Oxley comes into effect. This is post Enron, this is
24 post Worldcom where the atmosphere is charged, and the
25 government and the investing public is acutely aware of

1 accounting fraud with corporations.

2 So if, anything, the people at HealthSouth, including
3 Mr. Brown, should have been more on their toes about
4 recognizing fraud when it's presented to them and to do
5 something, but that did not happen. He just went along and did
6 his job in furthering the objectives of the conspiracy. He
7 never said no.

8 Again, with the same store volume, in the memorandum,
9 it's described as an isolated event. It's minimized as one of
10 a hundred, the statistics approximately set out in the press
11 release, changed the number to look better is what Mr. Brown
12 did. Even if it was still a negative, he lied. He falsified
13 the numbers to make the company look better. That's what all
14 of these people did. That's what Mr. Brown did. He knew it
15 was wrong, and he did it anyway.

16 Again, with the same store volume, he's being
17 approached by the CFO of the company, the CEO of the company,
18 who is also a member of the Board of Directors, asking him to
19 do things that he recognizes are wrong.

20 So, Your Honor, we would ask that the court bear in
21 mind that, notwithstanding what it has heard today, that
22 Mr. Brown should be given an appropriate sentence that meets
23 the factors as set out in Section 3553 of Title 18 that the
24 court considers, of course, each time it imposes sentence. And
25 one of those elements is that the court impose a just

1 punishment in accordance with the crime that Mr. Brown has pled
2 guilty to, to promote respect for the law and to provide a
3 deterrence to other corporate executives that lying to the
4 investing public is not going to be tolerated.

5 The outpatient division was the one of the five
6 components that Mr. Brown was dealing with when he was
7 adjusting the same store numbers. HealthSouth touted itself as
8 the country's largest provider of outpatient rehab services.
9 Outpatient services is a big deal.

10 HealthSouth was located in all fifty states and
11 several foreign countries. People around the country who see
12 HealthSouth facilities, they can't come to Birmingham and meet
13 with the top executives to decide whether or not it's a good
14 investment decision. They have to rely on what the company
15 puts out. They have to rely on what Wall Street analysts put
16 out who in turn have relied upon what the company puts out in
17 its financial records.

18 The investing public has to be able to rely on what
19 HealthSouth and every other publicly-traded company put on
20 their books as the absolute truth. And to shade that, to
21 misrepresent that, to paint a false picture, it cannot be
22 tolerated. Whether it's a little lie or a big lie, the fact is
23 that lies are being made in those financial reports to
24 misrepresent the financial status of the company, and people
25 are relying on that to their detriment.

1 And having said that, Mr. Brown was a member of the
2 team and contributed to HealthSouth's false statements in which
3 the investing public suffered as a result. We ask the court to
4 impose an appropriate sentence. Thank you, Your Honor.

5 THE COURT: All right. We're going to be in recess
6 until 2:30.

7 (Brief recess)

8 THE COURT: I'm going to tell you your sentence. It
9 is a year and a day. I'm going to make some statements on the
10 record, and then I'm going to make some additional comments.

11 18, U.S. Code, Section 3553(a)(6) provides that "a
12 court, in determining the particular sentence to be imposed,
13 shall consider, among a number of factors, the need to avoid
14 unwarranted sentence disparities among defendants with similar
15 records who have been found guilty of similar conduct." Thus,
16 as required by this statute, and as I would do regardless, I
17 have certainly carefully considered the results in the other
18 HealthSouth cases in arriving at a reasonable sentence.

19 Your co-conspirators who have been sentenced, with
20 the exception of Weston Smith, received very light sentences,
21 ranging from probation to a three-month sentence. Three of the
22 defendants who received light sentences were Chief Financial
23 Officers, who actively participated, often for years, in a
24 massive fraud.

25 There will clearly be a disparity between the prison

1 sentence that I am imposing and the sentences of your
2 co-conspirators. I believe that this disparity would be a
3 legitimate reason to give you a lower sentence than what I
4 think you deserve.

5 Again, Section 3553(a) provides that "A court, in
6 determining the particular sentence to be imposed, shall
7 consider among a number of factors the need to avoid
8 unwarranted sentence disparities among defendants with similar
9 records who have been found guilty of similar conduct."

10 However, it is my opinion that other Section 3553(a)
11 factors outweigh this factor. Specifically, Section 3553(a)
12 provides in pertinent part that "in determining the particular
13 sentence to be imposed, the court shall consider the nature and
14 circumstances of the offense, the need for the sentence imposed
15 to reflect the seriousness of the offense, to promote respect
16 for the law and to provide just punishment for the offense and
17 the need for the sentence imposed to afford adequate deterrence
18 to criminal conduct." All of these factors, and I will
19 elaborate on that in a minute, weigh in favor of a longer
20 sentence.

21 As noted, Section 3553(a)(6) commands that a court
22 consider the need to avoid unwarranted sentence disparities
23 among defendants with similar records who have been found
24 guilty of similar conduct. The key word is "unwarranted." In
25 addition to your co-conspirators, there have been many other

1 defendants in the recent past with similar records who have
2 been found guilty of similar conduct in other jurisdictions.
3 And although I won't read them for the record, I did in the
4 Bill Owens case, I will note for the record that the sentence
5 you will receive is not out of line with several sentences
6 imposed in several recent white collar cases for similar
7 defendants in federal court in other jurisdictions.

8 By giving you a custodial sentence longer than that
9 imposed on many of the other HealthSouth defendants, Mr. Brown,
10 I want you to know that I do not think you are the only
11 defendant who deserves such a sentence. There are certainly
12 others who I believe deserve significantly longer sentences.

13 In my opinion, a person involved in fraud of this
14 magnitude, regardless of the amount of their cooperation or the
15 length of time since their involvement, deserves a sentence of
16 imprisonment that will be sufficient to serve as a deterrent to
17 those contemplating white collar fraud and also sufficient to
18 provide just punishment.

19 In my view, a sentence of probation accomplishes
20 neither of these two important sentencing objectives. Neither
21 does a short custodial sentence.

22 To be candid, and as I am well aware, and it's
23 difficult for me to impose this sentence knowing this, there
24 are some of the HealthSouth defendants whose culpability could
25 be compared to yours who received probationary sentences.

1 There were others whose involvement in the fraud was clearly
2 more extensive and long standing who received probationary
3 sentences.

4 I regret that there will be a disparity between your
5 sentence and some of the HealthSouth defendants who, based on
6 reading their presentence reports, were guilty of similar or
7 worse conduct than the conduct to which you pled guilty.

8 I am also not unaware that you have undoubtedly
9 suffered due to the delay in your sentencing. The government
10 requested that you not be sentenced until all of the
11 HealthSouth defendants were tried and all the cases were
12 completed, which only occurred recently when the Crumpler case
13 was completed.

14 Although the request for delay in your sentencing was
15 motivated by the government's desire to have you available for
16 necessary meetings, and I know you didn't testify, but you were
17 available to testify if needed, the uncertainty of your fate in
18 the years since your plea have, I am sure, been difficult for
19 you and have made you unable to get on with your life.

20 While I recognize and certainly accept that you have
21 suffered, that fact frankly weighs very little in my decision
22 as to an appropriate sentence, and this is because, like all
23 the defendants in the HealthSouth case, your suffering is a
24 suffering of your own making. And I recognize that you
25 accepted full responsibility for that.

1 You are guilty of participating in a massive
2 corporate fraud. As I said earlier, frankly, the magnitude of
3 it is mind boggling to me.

4 In addition to the loss to the shareholders,
5 HealthSouth, the company, suffered enormous monetary losses in
6 the hundreds of millions of dollars. Hundreds of HealthSouth
7 employees lost their jobs, and those that remained faced both
8 the uncertainty brought to their lives as a result of the
9 announcement of the fraud and the need to devote countless
10 hours to the stabilization and rebuilding of the company while
11 continuing to focus on providing quality care to their
12 patients.

13 I think the last part of my sentence is important
14 enough to repeat. And I know you lost your job, but you were
15 involved in the fraud. Hundreds of innocent HealthSouth
16 employees lost their jobs as a result of the fraud.

17 As I said at Mr. Owens' sentencing, the HealthSouth
18 accounting fraud is one of the largest in the history of our
19 country. You were involved at least with regard to one small
20 period of time in putting on the books of HealthSouth over 27
21 million dollars in assets that the company did not have in that
22 year.

23 And I recognize that unlike many of those who got
24 probationary sentences, you did not personally benefit, and I
25 regret that your sentence is more severe than some of those

1 defendants. But it is this court's intention that corporate
2 offenders in the Northern District of Alabama understand
3 clearly that white collar criminals will not be treated
4 leniently by this court.

5 Corporate offenders are nothing more than common
6 thieves wearing suits and wielding pens as their weapons.
7 Corporate executives' ambition for material wealth, corporate
8 success and social stature will not be fulfilled through
9 bilking innocent investors who place their life savings and
10 trust in them.

11 The criminal fraud which thrived in the culture of
12 corporate greed that existed at HealthSouth will not be
13 tolerated by this court.

14 The court finds that the government's motion for
15 downward departure pursuant to Section 5K1.1 and 18, U.S. Code,
16 Section 3553(e) based on the defendant's substantial assistance
17 to the government should be granted.

18 The court finds that the appropriate Guideline level
19 for consideration should be a Level 13 which, when combined
20 with a Criminal History Category of I, creates an advisory
21 Guideline range of 12 to 18 months, and a fine range from
22 \$3,000 to \$30,000. The supervised release term is from two to
23 three years.

24 The court has departed based on the court's
25 evaluation of the significance and usefulness of the

1 defendant's assistance, taking into consideration the
2 government's evaluation of the assistance rendered, the
3 truthfulness, completeness and reliability of the information
4 provided by the defendant, the nature and extent of the
5 defendant's assistance, the risk of injury to the defendant.
6 In my view, all of the HealthSouth defendants who cooperated
7 placed themselves at some potential risk or danger.

8 Also the court has considered the timeliness of the
9 defendant's assistance. I am not considering it in a negative
10 way at all that you did not come forward initially. You did,
11 as soon as you were approached, cooperate.

12 Although the court recognizes its discretion under
13 Booker to further modify the sentence, it specifically declines
14 to do so.

15 Pursuant to the Sentencing Reform Act of 1984, it is
16 the judgment of the court that the defendant, Jason Brown, is
17 hereby committed to the custody of the Bureau of Prisons to be
18 imprisoned for a term of 12 months and one day.

19 Having considered the Guideline computations and
20 having taken them under advisement, the court finds that the
21 sentence is reasonable when considering the following
22 sentencing factors found at 18, U.S. Code, Section 3553(a).
23 First, the nature and circumstances of the offense. As noted,
24 the HealthSouth accounting fraud was one of the most extensive
25 in the nation. This defendant's participation helped

1 facilitate and conceal the fraud from auditors which resulted
2 in thousands of members of the investing public suffering
3 losses, millions of dollars in losses to HealthSouth, and the
4 loss of hundreds of employees' jobs at HealthSouth.

5 The court has also considered the history and
6 characteristics of the defendant. The court recognizes that
7 the defendant has otherwise lived as a law-abiding citizen, and
8 the court has read and considered and finds very impressive all
9 the letters supporting the defendant's otherwise exemplary
10 character and has taken those into consideration.

11 The court has also taken into consideration the need
12 for the sentence imposed to reflect the seriousness of the
13 offense, to promote respect for the law and to provide just
14 punishment for the offense.

15 The court, as noted, does not take white collar crime
16 lightly. This defendant's fraud involved over a billion
17 dollars and numerous victims. It is the intent of the court
18 that the sentence imposed will promote respect for the laws
19 that protect citizens from this type of corporate fraud.

20 A year and a day is just punishment when taking into
21 account the fact that the original advisory Guideline range is
22 60 months, combined with the defendant's cooperation which is
23 resulting in the lower sentence.

24 The court is also taking into consideration the need
25 for the sentence imposed to afford adequate deterrence to

1 criminal conduct and to protect the public from further crimes
2 of the defendant.

3 The court believes that due to the defendant's
4 acceptance of responsibility and remorse, that a custodial
5 sentence is not needed to deter this defendant from further
6 criminal conduct.

7 However, the sentence is intended to send a message
8 to other corporate executives, no matter what their role, who
9 may be considering engaging in fraudulent behavior that a
10 custodial sentence will be forthcoming if they are caught.

11 Finally, the court has considered the need to avoid,
12 as mentioned, the unwarranted sentence disparities among
13 defendants with similar records who have been found guilty of
14 similar conduct. Again, the key word is "unwarranted."

15 The various participants in the HealthSouth
16 conspiracy played different roles and had different periods and
17 degrees of involvement. And I've noted that there are some who
18 had much more serious involvement than Mr. Brown who received
19 probation.

20 However, this court agrees with the holding in U.S.
21 versus Gallegos, 129 F.3d, 1140, 1143 (10th Cir. 1997), that
22 the purpose of the Guidelines is to eliminate disparities in
23 sentencing nationwide, not to eliminate disparity among
24 co-defendants.

25 As noted, the court has examined sentences from other

1 cooperating defendants in this district as well as numerous
2 sentences in corporate fraud cases, recent corporate fraud
3 cases, from around the nation. Again, and I will state it
4 again, a person involved in a fraud of this magnitude,
5 regardless of the amount of their cooperation or the length of
6 their time in the involvement, deserves a sentence of
7 imprisonment that will be sufficient to serve as a deterrent to
8 those contemplating white collar crime and provide just
9 punishment. And in my view, a sentence of probation or a short
10 custodial sentence accomplishes neither of these two sentencing
11 objectives.

12 The court finds that the sentence imposed is a
13 reasonable one in light of the Guidelines and the factors at
14 18, U.S. Code, Section 3553(a) and concludes that the sentence
15 imposed would have been the same regardless of how the
16 Guideline issues, particularly with regard to the loss amount,
17 had been resolved.

18 Pursuant to 18, U.S. Code, Section 3663(a)(c)(3) and
19 U.S. Sentencing Guideline Section 5E1.1, the court finds that
20 the number of identifiable victims is so large as to make
21 restitution impracticable, and determining complex issues of
22 fact related to the amount of victims' losses would complicate
23 or prolong the sentencing process to a degree that the need to
24 provide restitution to any victim is outweighed by the burden
25 on the sentencing process. Therefore, no restitution is

1 ordered.

2 I am not imposing a fine. It is further ordered that
3 the defendant shall pay to the United States a special
4 assessment of \$100. The assessment fee is due immediately.

5 Upon release from imprisonment, the defendant is
6 placed on supervised release for a term of two years. While on
7 supervised release, the defendant shall comply with the
8 standard conditions of supervised release of record in this
9 court and the following special condition:

10 The mandatory drug testing provisions of 18, U.S.
11 Code, Section 3583(d) are waived upon the court's finding that
12 the offense of conviction is not drug related. There is no
13 current or past history of substance abuse, and there is a low
14 risk of future substance abuse by the defendant.

15 Is there any objection from any party as to the
16 findings of fact, the calculations, the sentence or the manner
17 in which the sentence was pronounced or imposed other than
18 previously stated for the record? Anything for the government?

19 MR. INGRAM: Your Honor, just three items of
20 housekeeping. With regard to Count Two, the forfeiture count,
21 the government would move to dismiss that.

22 THE COURT: All right. It will be dismissed.

23 MR. INGRAM: With regard to the departure, just for
24 the record, the government would lodge an objection as to the
25 extent of the departure.

1 And, thirdly, just a matter of clarification, if I
2 may, when the court found its loss calculation, did that
3 include a finding both with regard to shareholders and
4 bondholders?

5 THE COURT: Yes, I accepted the finding in the
6 presentence report.

7 MR. INGRAM: So that was roughly the 1.8 million for
8 shareholders and then --

9 THE COURT: I would have to look back at it. Wasn't
10 that right?

11 MR. INGRAM: I just may have taken it down wrong.

12 PROBATION OFFICER RICHARD: The shareholders was the
13 1.8 million. You did not add in your findings the bondholders.

14 THE COURT: Let me look here. I overruled the
15 objection to the presentence report, and the objection to the
16 bondholders is included in the presentence report. I intended
17 to say, if I didn't say it, that it's the amount that's in
18 Paragraph 61 which is \$2,836,393,638.

19 MR. INGRAM: Thank you. I just wanted to make sure.

20 THE COURT: I may have only talked about the loss to
21 shareholders, but that was my intention.

22 MR. INGRAM: Other than that, nothing else from the
23 government, Your Honor. Thank you.

24 THE COURT: All right. Mr. Espy, anything else for
25 the defendant?

1 MR. ESPY: No, ma'am, except we do except as to the
2 disparity, which the court has talked about.

3 THE COURT: Right. Okay. I will let you tell me
4 within reason when he would like to report, and also I will
5 recommend that he be placed in a facility as close as possible
6 to his home. Is that in Birmingham now?

7 MR. ESPY: Yes, ma'am, it is. He is in Birmingham.

8 THE COURT: You all can talk a minute. Let me say
9 this, Mr. Brown: I know today seems the bleakest day of your
10 life and that you don't know how you're going to get through
11 this or that your family is or any of this. But you were a
12 person who has admitted what you did. You followed
13 directions. A lot of people in your situation did the same
14 thing.

15 I really am confident with these people behind you
16 and just the character that you have that you can come forward
17 and be successful in life. It's severe punishment, but this
18 whole crime, including your involvement in it, was very
19 serious. And I want you to know that I wish you really well
20 when this is over. And I know no one in the room -- all I can
21 tell all of you is that this sentence, as well as Mr. Owens'
22 sentence, because of the way these cases have gone, has caused
23 me a lot of soul searching. And it's something I considered
24 very seriously.

25 Each judge on this court has to give the sentence

1 that they think is appropriate, and so that's what I've done.
2 Just as every other judge gave the sentence they thought was
3 appropriate, I'm giving the sentence I think is appropriate,
4 but I'm aware that there's a disparity in the sentence you
5 received and others who were much more involved, and that is
6 not something that is easy for me to do.

7 I will let you sit there and talk for a minute or
8 two, and then you can -- let me see counsel just briefly.

9 (Brief pause)

10 THE COURT: All right. What has the defendant
11 decided?

12 MR. ESPY: February 1st, Your Honor.

13 THE COURT: All right. Mr. Brown, I will direct you
14 report to the designated institution or to the U.S. Marshal
15 downstairs at 10:00 a.m. on February 1st. Until then you're
16 continued on your same bond, including the condition that you
17 not violate any local, state or federal law. Do you
18 understand?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: I don't think I said, but you have the
21 right to appeal the sentence imposed, even though I think that
22 right may have been given up in the plea agreement, but I
23 always tell a defendant at sentencing that he has the right to
24 appeal the sentence imposed within ten days if he believes the
25 sentence is in violation of the law. Anything further from the

1 government?

2 MR. INGRAM: Nothing from the government.

3 THE COURT: Anything further from the defendant,
4 Mr. Espy?

5 MR. ESPY: No, ma'am.

6 THE COURT: Thank you.

7 (Court adjourned.)
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA * CR-03-B-338-S

V. *

JASON BROWN *

* * * * *

CERTIFICATE OF REPORTER

I, Julie A. Martin, Official Court Reporter for the United States District Court, Northern District of Alabama, do hereby certify that the foregoing 96 pages are a true and accurate transcript of the proceedings had in this matter, as herein above set forth, and that I have no interest of any nature whatsoever regarding the ultimate disposition of this litigation.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Julie A. Martin, RMR, CRR

Date

Official Court Reporter